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BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

RATE ADJUSTMENT DUE TO EXTRAORDINARY OR EXCEPTIONAL CIRCUMSTANCES	Docket No. R2013-11R

REPLY COMMENTS OF THE UNITED STATES POSTAL SERVICE
IN RESPONSE TO COMMISSION ORDER NO. 2540
(July 6, 2015)

I. INTRODUCTION

To be clear, and contrary to the representations of several commenters, the Postal Service does not contend that the Commission should reopen the record or otherwise engage in a wide-ranging inquiry on remand. Instead, the Commission should do both what the court ordered – eliminate the effects of the “count once” rule that the court vacated – and what the court expressly stated the Commission could further do on remand – reconcile the evident conflict within Order No. 1926 concerning the Postal Service’s ability to adjust its operations in response to the volume losses that the Great Recession caused.

Regarding the “ability to adjust” issue, the court expressly left the issue open, and no commenter has articulated a principled reason as to why the Commission should decline to consider it on remand. Indeed, as discussed in section III below, the Commission has a duty to consider the matter as part of its responsibility under the Administrative Procedure Act (APA) to engage in reasoned decisionmaking. This is particularly true here, given the centrality of the “ability to adjust” finding under the “new normal" framework that the court upheld and the importance of this proceeding to the financial health of the Postal Service. Resolving the issue should not be particularly time-consuming or complicated and certainly can be done well before the time to collect the exigent surcharge elapses under any serious measure of the revised exigent loss after correcting the "count once" issue.

As for the "count once" issue, correction of the Commission's earlier error is straightforward. As addressed in the Postal Service's initial comments, it involves nothing more than taking the annual volume losses that the Commission has already found were due to the Great Recession and computing the *cumulative* losses each year (until such time as the Commission found the Postal Service could have adjusted its operations in response to them under the "new normal" framework) rather than simply computing the *incremental* year-over-year losses in a given year. As discussed in section IV below, the alternative approaches proposed by several commenters for addressing the "count once" error fail to eradicate the impact of the error or introduce needless complexity in what should be a fairly simple exercise, and in either case produce a result that, in contrast to the Postal Service's proposal, is far removed from any reasonable estimate of the financial harm that the Great Recession caused the Postal Service.

II. AS THE COMMISSION ALREADY DETERMINED, IT NEED NOT AWAIT THE ISSUANCE OF THE D.C. CIRCUIT'S MANDATE BEFORE ADDRESSING THE ARGUMENTS ON REMAND.

Oddly, while the mail-industry commenters are generally unified in their desire to have the Commission act quickly on remand, one set of such commenters argues that the Commission should not begin considering the issues on remand until it receives the formal mandate from the court – an argument that the Commission has already rejected, correctly, in both a letter it submitted to the D.C. Circuit and in Order No. 2540.

In its Initial Comments, Valpak asks the Commission to withdraw its waiver of the 45-day notice requirement "and suspend these proceedings on remand" based on the untenable theory that the Commission is without authority to act before the court's mandate is issued.[1] That contention, however, is contradicted by D.C. Circuit case law[2] expressly recognizing an agency's authority to move forward with remand proceedings pre-mandate. As the Commission has already correctly recognized, its prompt response to the court's opinion is not only authorized, but necessary to avoid the "burdensome series of rate decreases and increases" that would result from the position Valpak advocates.[3]

Contrary to Valpak's contentions, the Commission stands on solid ground in asserting its authority to move forward in this docket before the mandate issues.[4] Indeed, the D.C. Circuit has flatly rejected the notion that an agency is disabled from *sua sponte* acting on remand pre-mandate.[5] In *Chamber of Commerce v. SEC*, the court denied a challenge to the SEC's authority to proceed on remand mere days after the court released its decision on review, stating plainly that "agencies possess authority to address issues identified by the court prior to the issuance of its mandate."[6] The SEC in that case found that prompt action was necessary to avoid disruption to the

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[1] Valpak Direct Marketing Sys., Inc., *et al.*, Initial Comments in Response to Order No. 2540 (June 26, 2015) at 1-7 (hereafter "Valpak Initial Comments").

[2] Valpak correctly observes that D.C. Circuit law governs this question. *Id.* at 4.

[3] Order No. 2540 at 5.

[4] *Id.* at 4.

[5] *Chamber of Commerce v. SEC*, 443 F.3d 890, 899 (D.C. Cir. 2006).

[6] *Id.* at 898.

market, to those who had already made efforts to come into compliance with the agency's prior rule, and to investors who would be left vulnerable to losses in the interim.[7] Like the SEC in *Chamber of Commerce*, the Commission is entitled to conclude that the disruption that sequential rate changes would cause to the Postal Service and mailers compels swift action.[8]

Unable to avoid the plain meaning of *Chamber of Commerce*, Valpak attempts to distinguish other cases in which the D.C. Circuit has recognized an agency's ability to act pre-mandate on the ground that "in those cases the mandate was withheld pending agency action in order for the court to retain jurisdiction until the agency action was resolved or to prevent complete disruption to the regulatory system."[9] The Postal Service fails to see how an instance in which the court *withheld* the mandate so that the agency could act supports Valpak's position that the mandate must be issued before an agency can act.[10] In any event, to the extent Valpak is trying to distinguish these cases on the basis that the court specifically instructed the agency to proceed, the D.C. Circuit already rejected this argument in *Chamber of Commerce*.[11] Otherwise, Valpak's suggestion that sequential rate fluctuations would not cause substantial disruption to the Postal Service and mailers is astonishing and contrary to the Commission's acknowledgment that a prompt response is necessary to avoid that outcome.

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[7] *Id.* at 895-96 (citing SEC response to remand, 70 Fed. Reg. 39,390 (July 7, 2005)).

[8] Order No. 2540 at 5.

[9] Valpak Initial Comments at 4.

[10] Valpak also argues that, in light of the Rule 28(j) letters filed with the D.C. Circuit by the Postal Service and the Commission, the court's decision not to immediately issue the mandate somehow confirms the Commission's lack of authority to proceed. The court, however, has said no such thing. Indeed, the court's decision not to issue the mandate with its opinion, particularly where the Commission told the court that it need not do so, is fully consistent with the position that authority to move forward on remand is not conditioned on the mandate.

[11] 443 F.3d at 898.

In sum, Valpak's contention that issuance of the mandate is a jurisdictional prerequisite to these proceedings is simply without merit. The Commission correctly concluded that it is authorized to act in this docket before the mandate issues, and its previous conduct is consistent with that understanding – long after the review proceedings commenced in the D.C. Circuit but before the court issued its decision, the Commission issued Order No. 2319, setting forth the process of removing the surcharge once $2.8 billion in contribution was collected, even though the $2.8 billion figure was the subject of dispute on appeal.[12] It did not hesitate to act then, and it similarly should not hesitate to act now.

III. THE COMMISSION ON REMAND SHOULD FULLY CONSIDER THE ARGUMENT THAT THE COMMISSION MADE INCONSISTENT FACTUAL FINDINGS CONCERNING THE POSTAL SERVICE'S ABILITY TO ADJUST ITS OPERATIONS IN RESPONSE TO RECESSION-RELATED VOLUME LOSSES.

All commenters agree that the Commission must correct the "count once" error on remand; their arguments on that topic are addressed in section IV. But the industry commenters plainly resist having the Commission reconcile its finding in Part IV of Order No. 1926 – that the Postal Service was able to adjust its operations in FY2010, FY2011 or FY2012 (depending on class of mail) to the reduced level of mail volume produced by the Great Recession – with its finding in Part V of the same order – which recognized the constraints, including its institutional costs and statutorily mandated obligations, that inhibit the Postal Service's ability to adjust its operations readily to the level shift in volume and which identified no steps that the Postal Service should have taken (but failed to take) to so "adjust." While their resistance is understandable given

[12] Order No. 2319 (Jan. 12, 2015).

how critical the “ability to adjust” issue is under the “new normal” framework articulated by the Commission and upheld by the court, and how inconsistent the Commission’s findings are on that issue, the commenters offer no principled basis for the Commission to decline to consider the issue.

The commenters’ primary argument is that the court left intact the Commission’s “new normal” analysis, under which lost mail volume is deemed “due to” the recession only until such time as the Postal Service could adjust to it, so there is no need to revisit the matter on remand. It is true, of course, that the court’s opinion does not itself *require* the Commission to reconcile its conflicting findings concerning the Postal Service’s ability to adjust its operations. But the absence of such an outright judicial command is not surprising, given the court’s perception of the issue it was called upon to decide.

No one disputes that (1) mail volumes dropped precipitously beginning at the end of FY2007 from both the level and the trend established in the preceding several years, and (2) as the Commission found in Order No. 1926, the level of mail volume will not return to its previous levels, and instead has settled at a new, and permanently lower, level.[13] The parties disputed the extent to which that decline and the resultant lower level of volume was caused by the Great Recession, with the Postal Service arguing

[13] *See* Order No. 1926 at 96 (“It is now widely accepted that mail volumes will never again achieve 2006 levels.”). The Greeting Card Association’s Initial Comments state that the Commission rejected the proposition that the mailpieces are “lost essentially forever,” Comments of the Greeting Card Ass’n *et al.* (June 26, 2015) at 8 & n.8 (hereafter “GCA Initial Comments”), but to the contrary the Commission actually agreed with that proposition. Rather, what the Commission rejected is the argument that the “due to” clause requires the Commission to indefinitely attribute part of that permanently lower level of mail volume to the Great Recession, and the Commission decided instead that the lower level of volume ceases being “due to” the recession once the Postal Service gains an ability to adjust its operations in response to the loss of contribution that the lost volume caused, on the theory that at such a point the level shift in volume has lost its “extraordinary or exceptional” character. So, under the Commission’s analysis, the volume is lost forever but cannot be *counted* forever.

that the Great Recession was the principal cause of the sudden and unprecedented level shift and others arguing that the Great Recession was a relatively minor cause. The Commission's analysis of that dispute – apart from the "count once" error – was upheld in court.[14]

But the parties also disputed whether, in light of the fact that mail volume would never return to its pre-recession level, at least some of that permanently suppressed level of volume should continue to be attributed to (and thus was "due to") the Great Recession even after volume had fully shifted to the new and lower level. The Commission said no, reasoning in large part that there comes a point at which the Postal Service can adjust its operations to the level shift in mail volume, after which time any continuing harm (in the form of an ongoing lower level of volume) ceases to be "due to" the Great Recession.[15]

The Postal Service challenged the Commission's conclusion as inconsistent with the statutory "due to" standard, which, in the Postal Service's view, speaks simply to "but-for" causation and not to the Postal Service's ability to adjust its operations. Correctly perceiving that dispute as one of statutory construction – whether "due to" refers simply to causation-in-fact (*i.e.,* the extent to which the new, lower level of mail volume was caused by to the Great Recession) or whether, instead, it permits the

[14] *Alliance of Non-Profit Mailers v. Postal Regulatory Comm'n*, No. 14-1009, slip. op. at 15-20 (D.C. Cir. June 5, 2015).

[15] *See* Order No. 1926 at 96 ("The Postal Service seeks to recover annually the contribution it would have received from mail long after that mail left the system and after it could have (and has) right-sized operations to reflect the new normal. To find otherwise would improperly discourage the Postal Service from taking necessary steps to right-size its network due to an extraordinary or exceptional event. Essentially, by allowing the Postal Service to recover a continuing and growing stream of 'lost contribution' as due to the Great Recession, the Commission would provide the Postal Service with a revenue stream that does not require it to adjust for those lost pieces."). Although the discussion in that part of its Order concerned why it imposed the "count once" rule that the court rejected, it is best read as summarizing the principal underpinning of its "new normal" analysis – which the court upheld, prompting the court to invalidate "count once" as inconsistent with that analysis.

Commission to consider the Postal Service's ability to adjust its operations in response to that level shift – the court concluded that the statutory language was ambiguous,[16] and upheld the Commission's interpretation under the consequently deferential standard of review.[17] Accordingly, the Postal Service's "ability to adjust" has been upheld as a permissible component of the "new normal" framework that Order No. 1926 established under the statute's "due to" clause.

But the issue presented on remand – when, in fact, could the Postal Service have adjusted its operations in response to the level shift in mail volume? – has nothing to do with construction of the statute or the validity of the Commission's analytical framework. Although the "ability to adjust" issue is derived from a key component of the framework that the court upheld, it is entirely a factual question, and thus is different in kind from the issue the court addressed. The court believed that it had not been called upon to address the Commission's findings on that factual question, and thus limited its analysis to whether the Commission's "new normal" framework comported with the statutory phrase "due to."[18] The Postal Service is not contesting that framework here, but is instead disputing the factual finding under one prong of the framework, concerning when the Postal Service could have adjusted to the level shift in volume, and thus when the Great Recession had lost its "exigent character.[19]

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[16] *Alliance of Non-Profit Mailers*, slip. op. at 11-12.

[17] *Id.* at 11-12, 16-17; *accord* Valpak Initial Comments at 7 (noting that the court "specifically affirmed the Commission's 'new normal' approach").

[18] *Alliance of Nonprofit Mailers,* slip. op. at 17 n.3; *accord* Initial Comments of Association for Postal Commerce, *et al.*, on Remand (June 26, 2015) at 9 (hereafter "PostCom Initial Comments") (conceding that the court "declined to decide the argument").

[19] *Alliance of Nonprofit Mailers,* slip. op. at 12. Valpak's contention that footnote 3 of the court's opinion does not "call into question the legitimacy" of the Commission's analysis, Valpak Initial Comments at 8, is consistent with the Postal Service's position.

Although we disagree with the court that the issue was not squarely presented on appeal – the Postal Service's appellate brief devoted a three-page section to arguing how the Commission's finding under its "due to" framework concerning the "ability to adjust" is flatly inconsistent with the much longer discussion of the same topic in Part V of Order No. 1926,[20] and made the same point at other places in its briefs[21] – that disagreement is not pertinent to whether the Commission should resolve the inconsistency on remand. The court remanded the case; plainly recognized "ability to adjust" as a relevant factual question under the framework that the Commission established (and that the court upheld); and took no position on the question, stating instead that the Commission is "free to consider" on remand whether the Commission's finding on that question was inconsistent (and, hence, arbitrary).[22]

[20] *Alliance for Non-Profit Mailers*, No. 14-1010, Br. of U.S. Postal Serv. at 33-36 (arguing that the Commission's findings on the Postal Service's ability to adjust are "internally inconsistent and self-contradictory" because Part IV of the Order stated in a single paragraph that the Postal Service could adjust its operations by 2010 while Part V of the Order explained in detail why the Postal Service could not have readily adjusted its operations).

[21] *Id.* at 17 (concerning whether the Postal Service had done enough to "adapt" to the volume losses, "the Commission's 'new normal' analysis is flatly inconsistent with other parts of the Order in which the Commission correctly recognized that an exigent rate adjustment *was* 'necessary' even though USPS had been aggressively cutting costs and increasing efficiency"); *id.* at 28 (Commission's framework "is flatly inconsistent with other portions of the Order"); *Alliance for Non-Profit Mailers*, No. 14-1010, Reply Br. of U.S. Postal Serv. at 13-14 ("the Commission does not even mention the Postal Service's massive base of fixed institutional costs, much less explain how USPS could have supposedly 'adjust[ed]' those statutorily-mandated obligations in response to falling mail volume, or whether any such adjustment would be consistent with providing 'postal services … adapted to the needs of the United States.' 39 U.S.C. § 3622(d)(1)(E). Nor does the Commission attempt to square its 'new normal' rule with its conclusion in Part V of the Order that USPS was following 'best practices of honest, efficient, and economical management' to cut costs within the constraints of its statutory mandates. * * * In sum, it was arbitrary and capricious for the Commission to base its 'new normal' rule on USPS's purported ability to 'adjust' its operations to lower mail volumes without explaining what more USPS could or should have done to make those 'adjustments.'") (footnote omitted). Valpak's citation to *other* arguments the Postal Service presented in support of its assertion that the Postal Service never argued that the analysis of ability to adjust in Order No. 1926 was inconsistent, *see* Valpak Initial Comments at 8-9 ("the Postal Service did not assert any inconsistency on appeal"), is cherry-picking in the extreme. The Commission should disregard Valpak's obviously erroneous assertion.

[22] PostCom contends that, although the court "declined to decide" the "ability to adjust" issue, it implicitly "disagreed with the underlying premise of the argument: that the 'new normal' standard must allow the Postal Service to recover through exigent rate increases any and all costs whose recovery is 'necessary.'"

So, while the court's decision does not *require* the Commission to consider the Postal Service's ability to adjust or resolve the inconsistent conclusions that Order No. 1926 reached, the court's opinion expressly *permits* the Commission to consider that question on remand. This is not a situation where the Postal Service seeks to re-argue an issue that the court resolved against it on appeal.[23] Nor is this a situation where the Commission resolved an issue and a party left that issue undisturbed by failing to contest its resolution on judicial review.[24] Finally, this is not a situation where the court limited the scope of its remand to somehow foreclose consideration of the "ability to adjust" issue.[25] In short, the court's opinion nowhere precludes the Commission from

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PostCom Initial Comments at 9. That is not even close to the premise of our argument. We concede that, under the Commission's analysis in Order No. 1926, recovery is limited to losses that are "due to" the exigent circumstances and losses cease being "due to" the *exigent* circumstances (even though they are in some sense still being caused by the Great Recession) once the Postal Service gained its ability to adjust its operations in response to the volume losses. *See also* Postal Service Initial Comments at 13 n.29. The premise of our argument is, and remains, that the Postal Service did not gain such an ability to adjust until much later than the period identified in Part IV of Order No. 1926, and that the Commission's contrary finding in Part IV is contradicted by other parts of that same order as well as other pronouncements by the Commission.

[23] *See, e.g., Office of Personnel Mgmt. v. FLRA*, 905 F.2d 430, 434 (D.C. Cir. 1990) (noting that a party cannot "litigate[] anew" a question that the court already decided).

[24] *See* Docket No. C2009-1R, Order No. 1763 (June 26, 2013) at 17 (where party fails to challenge issue on review and court leaves it undisturbed, relitigation of issues previously decided is generally barred by issue preclusion), citing, *e.g.*, *United States v. Utah Constr. & Mining Co*., 384 U.S. 394, 422 (1966) ("When an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply res judicata to enforce repose."). Ironically, PostCom, which argues vociferously that the Commission should not address the "ability to adjust" issue, also seeks to reopen a question that the Commission decided in Order No. 1926 and that no mailer challenged on appeal. That issue is addressed in section IV below.

[25] *See GameFly, Inc. v. PRC*, 704 F.3d 145, 149 (D.C. Cir. 2013) (remanding case "for an appropriate remedy"); Order No. 1763 at 17 n.17 ("sole purpose" of court's remand in *GameFly* "was to impose an appropriate remedy," not to consider other issues). Instead, it remanded "the case . . . for proceedings consistent with this opinion," *Alliance for Non-Profit Mailers*, slip op. at 20, and part of that opinion expressly permitted the Commission to consider the inconsistency on the "ability to adjust" finding. *Id.* at 17 n.3. *Cf. Process Gas Consumers Group v. FERC*, 930 F.2d 926, 935 n.13 (D.C. Cir. 1991) (where court remands the case for proceedings consistent with its opinion and does not specify specific issues for Commission's consideration, parties can raise on remand issues not considered by court).

considering the “ability to adjust” issue on remand. Indeed, it expressly allows it, and agencies necessarily have the power to address issues identified by the court.

Finally, the language the court used – that the Commission is free to consider *a particular issue* on remand – is significant. Had the court viewed the issue as irrelevant or had the court intended to uphold the Commission’s resolution of it, there would have been no reason for the court’s “free to consider” statement. Moreover, the identified issue is specific, and thus cannot be read, as PostCom’s comments suggest, as merely an “unexceptional truism of administrative law” that “an agency is permitted to consider any issue on remand.”[26] The court’s opinion contained no such boilerplate language suggesting that the Commission is “free to consider” anything it chooses. Instead, it took the unusual step of expressly singling out *a particular issue* to clarify that the court itself was not resolving it but that the Commission is free to consider it on remand.[27]

It is true that the court stated that the Commission *may*, rather than *should*, consider on remand when the Postal Service could have adjusted to the level shift in mail volume. Two commenters use this lack of a more direct admonition to assert that, if the Postal Service truly wants the Commission to consider the issue, it should first seek rehearing from the court of appeals.[28] But the Commission’s decision whether to

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[26] PostCom Initial Comments at 10-11.

[27] *See, e.g., Parham v. J.R.*, 442 U.S. 584, 616-17 (1979) (upholding state’s statutory scheme for voluntary commitment of children against constitutional challenge, but noting that the court cannot determine on the record the specific children in question were appropriately committed under the requisite standards, providing instead that, on remand, the district court “is free to consider and should consider any individual claims that initial admissions did not meet the standards we have described in this opinion”); *Columbia Gas Transmission Corp. v. FERC*, 831 F.2d 879 (D.C. Cir. 1987) (denying FERC’s petition for rehearing of an earlier opinion holding that FERC had engaged in retroactive ratemaking but noting that FERC is “free to consider” on remand whether it has the authority to waive the rule against retroactive ratemaking).

[28] Valpak Initial Comments at 9 n.7 (if the Postal Service believes that the Court “made a mistake in its opinion, it could easily file a petition for rehearing with the court”); PostCom Initial Comments at 11 n.5 (if

consider the Postal Service's ability to adjust should not be driven by the Court's use of the phrase "is free to consider" rather than, for example, "really ought to consider." While the Commission's responsibilities flow in part from the dictates of the D.C. Circuit, its duty to consider the issue also derives from an independent source, the APA.[29]

The APA, which governs administrative proceedings as well as judicial review, imposes an ongoing duty on the Commission, even absent an express judicial demand, to engage in "reasoned decisionmaking."[30] A core component of "reasoned decisionmaking" is rational and internally consistent findings of fact.[31] While courts exist in part to enforce that requirement under the APA, the requirement itself exists not simply to allow judicial review but also to ensure that agencies reach, and parties are subject to, rational and well-reasoned administrative orders.[32] Thus, regardless of whether the D.C. Circuit has formally required the Commission to consider the critical factual question concerning the Postal Service's ability to adjust, the Commission should resolve the inconsistency on that topic, or, at the very least, explain why it

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the Postal Service believes that the court misunderstood its argument, "the remedy resides elsewhere" – *i.e.*, in court).

[29] 5 U.S.C. § 551 *et seq.*; 39 U.S.C. § 503 (applying chapters 5 and 7 of the APA to the Commission).

[30] *E.g.*, *U.S. Postal Serv. v. PRC*, 785 F.3d 740, 744 (D.C. Cir. 2015) (noting that the requirement applies to both agency rulemakings and agency adjudications), citing *Allentown Mack Sales & Serv., Inc. v. NLRB*, 522 U.S. 359, 374-75 (1988).

[31] *U.S. Postal Serv.*, 785 F.3d at 753-56 (even after deferring to Commission's construction of ambiguous statute, court remanded case because of basic inconsistency in Commission's reasoning and where application of the articulated standard is "inconsistent and inadequately explained"); *LePage's 2000, Inc. v. PRC*, 642 F.3d 225, 231-34 (D.C. Cir. 2011) (setting aside Commission's factual analysis as "rife with anomalies," and remanding for Commission to explain "inconsistencies in its order"); *see also Am. Fed'n of Gov't Employees v. FLRA,* 470 F.3d 375, 380 (D.C. Cir. 2006) (agency decision is arbitrary where it lacks a "rational explanation . . . based on consideration of the relevant factors," there is no "reasoned path" from the facts and circumstances to the decision it reached, or is "illogical on its own terms").

[32] *Allentown Mack*, 522 U.S. at 374-75 (noting that "[r]easoned decisionmaking . . .promotes sound results, and unreasoned decisionmaking the opposite"); *CBS, Inc. v. FCC*, 454 F.2d 1018, 1025 (D.C. Cir. 1971) (absent reasoned decisionmaking, "administrative litigants and the public generally would be set adrift on a potential sea of unconscious preference and irrelevant prejudice").

believes that no such inconsistency exists. The Commission should not use the lack of a formal court order as a cloak behind which to hide from its duties under the APA.

Moreover, notably absent from any of the comments that implore the Commission not to address the "ability to adjust" issue is a principled reason why the Commission should *not* consider it. Instead, the mailers are inviting the Commission to treat this remand proceeding as a capricious game, parsing various arcane doctrines of administrative law to persuade the Commission to decline considering the continuation of the surcharge on the merits. The mailers are free to approach the issue in this manner – to ask the Commission to play the role of Bartleby the scrivener and declare simply that it "would prefer not to" address the question.[33] But the Commission should decline that approach, particularly here, in what is likely the most consequential Commission proceeding to the Postal Service's financial health and its ability to continue providing needed postal services since the passage of the PAEA. The issues are far too important for the Commission to do anything other than exercise its authority in a responsible manner, by (1) considering whether it has stated an inconsistent position, either within Order No. 1926 or between that Order and other Commission pronouncements, concerning the Postal Service's ability to adjust its operations in response to the shift in mail volume, and (2) reconciling its conflicting and inconsistent findings, or explaining why it believes that no such inconsistency exists.

The only serious argument that the commenters have advanced for why the Commission should not consider the "ability to adjust" prong of its "new normal" framework is that it may require reopening the record and thus would take too long to

[33] Herman Melville, Bartleby, the Scrivener: A Story of Wall Street (1853).

decide, subjecting mailers to the risk of over-recovery.[34] But there is no reason that consideration of that narrow issue would take an inordinate amount of time.[35] First, the record need not be "reopened" for further factual development to resolve the narrow issue that the court's opinion left open. The Postal Service's initial comments pointed to the inconsistency in the Commission's analysis, articulated a sound basis for reconciling it, and provided specific volume and contribution figures from the existing record and from earlier Commission orders that would rectify the inconsistency. The Commission has all the information it needs to render a decision on the topic, particularly in light of the fact that all interested parties will have had an opportunity to comment on the Postal Service's proposal in their reply comments. Second, in the event that it determines it needs additional time or factual development to consider the matter, the Commission can always bifurcate the proceedings by correcting the "count once" error – which, as explained in our initial comments and as reiterated here, should alone produce sufficient added contribution to permit the surcharge to remain in effect well into FY2016 – and then render a decision on the "ability to adjust" before that 2016 deadline is reached.

IV. THE COMMISSION SHOULD REJECT THE MAILERS' ALTERNATIVE FORMULATIONS FOR CORRECTING THE "COUNT ONCE" ERROR.

The court vacated the Commission's "count once" rule because it was inconsistent with its broader holding that all volume losses attributable to the Great Recession should be included until such point that the Postal Service could adjust to

[34] PostCom Initial Comments at 2, 12; *accord* GCA Initial Comments at 4 (imploring the Commission to conclude the proceeding expeditiously).

[35] Valpak accuses the Postal Service as seeking to "reopen the exigent docket" to "completely litigate issues already settled." Valpak Initial Comments at 8. In fact, as explained above, the Postal Service seeks merely to address the error that the court has required the Commission to correct and the narrow additional factual issue that the court's decision specifically permitted the Commission to consider on remand. As discussed below, it is Valpak that is asking the Commission to act in a manner inconsistent with the court's decision.

them.[36] The "count once" rule – which substituted incremental, year-after-year losses for the cumulative losses the Postal Service actually suffered, even before it supposedly could "adjust" – was essentially a computational error. In its initial comments, the Postal Service supplied the simple computational fixes to the simple computational error, by substituting aggregate losses for incremental losses in the pre-"new normal" years, resulting in an additional 9.82 billion pieces of lost mail volume and roughly $1.2 billion in additional contribution lost, even if one otherwise accepts the Commission's factual finding as to when the "new normal" occurred.[37]

No group of commenters disputes the computations themselves, but two groups have pressed new arguments for how the Commission can offset the impact of the court-ordered eradication of the "count once" error. First, PostCom agrees with the volume figures the Postal Service presented to correct the "count once" error, but raises a newly minted argument, not even mentioned on appeal and having nothing to do with the error the court vacated, that the Commission should use unit contribution figures different from than the ones it used in Order No. 1926 to compute the financial harm

[36] *Alliance of Nonprofit Mailers*, slip op. at 11 (count once is "at war with the Commission's 'new normal' holding, which openly endorsed a longer period of time for such adjustments"); *id.* at 17 (vacating the "count once" rule because of its "controversion of the new normal rule's premises").

[37] Valpak complains that the Postal Service supplies a "mechanical tally" for eliminating the "count once" error rather than applying a "'new normal'-like analysis" that considers the Postal Service's ability to adjust. Valpak Initial Comments at 10. But that is precisely the point. The error that the court identified was that, on the one hand, the Commission's analysis purported to stop counting the volume losses caused by the Great Recession once the Postal Service could adjust to them but, on the other hand, it also stopped counting volume losses after one year even *before* it found that the Postal Service could adjust. The court concluded that the first part of that analysis was permissible under the statute's "due to" clause but that the second part was "at war" with the first part and thus was not permissible. The Postal Service's proposal for eradicating the "count once" error undoes the second part of the Commission's analysis and thus resolves the inconsistency that the court identified – that, by substituting incremental (year-after-year) losses for cumulative losses, the Commission stopped counting recession-caused volume losses before it concluded the Postal Service could adjust to them. By contrast, the premise of Valpak's argument—that the Postal Service should have adjusted even prior to the "new normal"—is the very thing that the court rejected.

caused by the Great Recession. Meanwhile, the Greeting Card Association ("GCA") presents a new proposal for how to count volume losses that persist over multiple years. Those arguments are addressed in turn below.

A. **The Unit Contribution Figures That the Commission Used in Order No. 1926 and Which Were Challenged By *No One* on Appeal, Were a Reasonable Method for Converting Lost Volume to Financial Harm. In Any Event, a Proper Application of the Year-By-Year Contribution Losses PostCom Now Asks the Commission to Impose Will Result in a Significantly *Higher* Estimate of Financial Harm.**

Throughout this proceeding, the primary focus of contention has been on the amount of volume lost by the Postal Service due to the Great Recession. Nevertheless, no matter how such a volume estimate is achieved, the necessary next step is to convert the lost volume estimate (measured in pieces) to actual financial harm (measured in dollars of lost contribution to the recovery of institutional costs). PostCom now seeks to bring to the fore the issue of exactly what procedure is appropriate for that conversion process. PostCom erroneously asserts that the Commission should reverse course on the conversion methodology it previously embraced, in order to arrive at the result that the Postal Service is essentially entitled to no further financial relief despite having prevailed before the court on the "count once" rule, which even PostCom agrees caused the Commission to undercount volume lost due to the recession by nearly *10 billion* pieces. PostCom's arguments conspicuously fail to support the result it is trying to achieve.

1. **The Failure of PostCom to Present Its Arguments Earlier Regarding the Conversion of Volume Losses to Contribution Losses Highlights the Weakness of Its Claims**

The first half of the PostCom Comments is couched as an argument that, when seeking to suspend the portions of Order No. 1926 premised on the "count once" rule vacated by the court, the *Postal Service* "erred" in its method of converting recognized volume losses to contribution losses.[38] Such an allegation, however, as even PostCom is forced to implicitly concede, is nothing more than a thinly-veiled attempt to challenge the *Commission's* methodology for converting lost volume to lost contribution. The Postal Service has done nothing more and nothing less than to simply apply the exact same methodology that Order No. 1926 used for that process. Without question, PostCom is attacking what the Commission did in Order No. 1926, rather than anything the Postal Service did in faithfully following the Commission's methodology when presenting its Motion to Suspend (and in section IV of its Initial Comments).

PostCom, therefore, is blatantly inconsistent in first seeking to relitigate this particular aspect of Order No. 1926, while piously advocating in the second half of its pleading that the Commission should not reopen the record to address the "ability to adjust" issue expressly left open by the court. PostCom decrees that the "Postal Service should not be allowed to cherry-pick the issues for reopening."[39] The double standard which PostCom seeks to apply is patent.

Moreover, PostCom utterly fails to explain why, if the Order No. 1926 conversion methodology were so flawed, with such significant consequences, it did not raise this issue in its appeal. Not only was this matter not one of the primary issues raised by PostCom, but as near as can be determined, was never even mentioned in any of the mailers' briefs to the court. Having chosen to sit on its hands on this matter, despite filing a petition for review (unsuccessfully) challenging many other aspects of Order No. 1926, PostCom now nonetheless claims that the Commission is obliged to jettison the

[38] PostCom Initial Comments at 3.

[39] *Id.* at 2.

Order No. 1926 approach in favor of a new approach now preferred by PostCom. The Commission's evaluation of whether this belated challenge to the Order has any true validity should reasonably take into account the fact that PostCom apparently deemed it to be of insufficient merit even to warrant a mention in the mailers' briefs to the court. PostCom should not be rewarded for springing its attack on Order No. 1926 now, for the first time on remand. Furthermore, as discussed below, the situation is much more complicated than PostCom chooses to acknowledge.

2. PostCom Offers No Valid Basis to Compel the Commission to Abandon the Conversion Methodology Selected in Order No. 1926

As PostCom is ultimately forced to concede, the actual conversion methodology applied in Order No. 1926 (and strictly followed by the Postal Service in its Motion to Suspend and in its Initial Comments) is the one specifically adopted by the Commission on page 105 of Order No. 1926.[40] While PostCom characterizes the reasoning provided by the Commission as "baffling,"[41] the choice of using FY2014 unit contributions for the conversion measure was clearly explained in the Order as providing a more meaningful comparison between contribution lost (when measured using FY2014 unit contribution) and contribution gained from the surcharge (likewise measured using FY2014 unit contribution). This choice, moreover, must be seen as part-and-parcel of the Commission's ultimate determination of the overall surcharge amount it was going to allow. Certainly the Commission was cognizant of the fact that the volume lost had not miraculously been regained, with (at the end of FY2013 when Order No. 1926 was issued) total Market Dominant volume still down approximately one quarter since

[40] PostCom Initial Comments at 6.

[41] Id.

FY2007, and volume of each of the four classes down in the range of 20 to 30 percent. The Commission was acting well within its discretion in choosing to use FY2014 unit contribution for the conversion process.[42]

In fact, in the analysis submitted earlier with its Initial Comments in November 2013, PostCom itself had likewise converted lost volume to lost contribution using both FY2012 and FY2014 unit contributions. The lost contribution amounts for FY2013 and FY2014 shown on page 41 of those Initial Comments were (without any explicit statement to that effect) derived using the FY2012 unit contributions. So were the corresponding figures for earlier years shown in the chart on the following page. But it is clear from the supporting documentation PostCom provided[43] that PostCom calculated the lost contribution for volume losses experienced *each year from FY2008 through FY2014* using only the FY2012 and FY2014 unit contributions. Then, presumably for no reason other than that it yielded a substantially smaller lost contribution estimate, PostCom chose to report in its Comments only the figures based on the FY2012 unit contributions. Indeed, if there is anything truly “baffling” about the unit contribution saga, it is why PostCom would have specifically chosen to report the FY2014 contribution loss based on FY2014 lost volumes to which were applied the *FY2012 unit contributions*, when PostCom had so obviously also (and much more logically) calculated the higher FY2014 contribution loss based on the application of

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[42] Moreover, the Commission also may have been taking into account the lag between the time the Postal Service first starting experiencing financial harm from the Great Recession, the time the Postal Service first sought exigent relief, and the time when that exigent relief was actually forthcoming. Relief provided in FY2008 from harm experienced in FY2008 would have comported much better with an evaluation of that harm grounded entirely in the FY2008 context, when contrasted with relief (from the same harm experienced in FY2008) that does not begin to flow until the middle of FY2014. In large measure, that may simply be another way to express the Commission’s selection of an “apples-to-apples” comparison.

[43] MPA-LR-1, Improved Approach.xlsx, Summary tab, filed Nov. 27 2013.

FY2014 unit contributions to FY2014 lost volumes. PostCom apparently views the choice of unit contributions to apply in the conversion process as a shell game in which it can always choose whatever option generates the lowest estimate of lost contribution. Therefore, PostCom's current postulation at page 3 of its Comments, that "inherent in the 'due to' requirement" of the statute is an alleged "requirement that the volume losses incurred during each year . . . must be matched with unit contribution values for that year," can only be taken with a grain of salt. PostCom adhered to no such "requirement" in its earlier submissions, and, as noted above, failed to propose any such "requirement" to the Court of Appeals.

PostCom attempts to draw deep meaning from the fact that, in an illustrative exercise accompanying its earlier Reply Comments, the Postal Service noted the relative advantages, when attempting to derive a cumulative lost contribution estimate, of matching lost volume estimates from particular years to unit contribution estimates from the same years.[44] PostCom, however, glosses over the Postal Service's primary conclusion from that exercise, which was that in the context of the Postal Service's volume loss estimates, this distinction did not yield a material difference (i.e., whether using FY12 unit contributions or year-specific unit contributions, both estimates clustered tightly around $22 billion).[45] The Postal Service, of course, was much more interested in clarifying the distinction between annual incremental losses and cumulative losses.[46] Since the Postal Service's case focused on annual effects in FY2012 and

[44] PostCom Initial Comments at 5.

[45] Postal Service Reply Comments at 16 (Dec. 6, 2013).

[46] *Id.*

beyond, the Postal Service had no particular need to dwell on particular earlier years and their effects on a cumulative estimate.

At this juncture, therefore, it would be eminently reasonable for the Commission simply to continue to adhere to the conversion process used in Order No. 1926, employing the FY2014 unit contributions. Nothing said by the court in any way relates to PostCom's new claim that the conversion process was flawed, and nothing the court did in vacating the "count once" rule in any way calls into question why that entirely independent process should not be retained. While it may appear that PostCom is trying to suggest some connection between the "count once" correction and PostCom's recalculation of harm premised on different unit contributions (asserting that one effect "nearly cancels out" the effect of the other), in reality the two issues are completely unrelated.

3. Properly Applying Year-Specific Unit Contributions in the Conversion Process Will Generally Yield Substantially Higher Lost-Contribution Estimates Given the Economic Realities of the Great Recession, Not the Lower Estimate Alleged by PostCom

If, however, the Commission were nonetheless inclined to explore PostCom's claims further, the Commission would need to contend with the fact that the substitute procedure that PostCom advocates is fatally flawed if applied in the manner and for the purpose that PostCom proposes. To begin with, PostCom agrees with the calculation previously provided by the Postal Service that 35.1 billion pieces of mail correctly reflects what the Commission's estimate of lost volume due to the Great Recession would be when no change is made other than to reverse the "count once" rule.[47]

[47] PostCom Initial Comments at 7.

Importantly, 29.9 billion pieces of those 35.1 billion pieces, or more than 85 percent, constitute mail volume reductions experienced specifically over the FY2008-FY2009 period. Therefore, accurately evaluating the effects of the missing volume from those two years is absolutely critical to the credibility of the overall estimate of financial harm caused by the Great Recession, at least under the cumulative loss framework established in Order No. 1926 and the specific limited number of years over which Great Recession volume losses were recognized in that Order.

Next, it is necessary to consider the foundational assumptions underlying any conversion methodology (such as the one used in Order No. 1926 and the alternative advocated by PostCom) based on reported unit contribution estimates. The key assumption is that the *actual* financial effect of a piece of lost volume in a particular mail category can be directly approximated by using the *reported* unit contribution for that category. That is an assumption that bears some examination, particularly with respect to each individual year to which it is applied. Contribution (towards the coverage of institutional costs) is the net effect of two factors – revenue and costs. What happens with certainty when volume declines, for any category of mail, is that the revenue that would have been obtained from the lost volume is necessarily lost as well. No revenue is received from pieces that are not mailed, and the postal revenue loss associated with any particular volume loss thus can be calculated unambiguously. The fact that volume losses in each year between FY2008 and FY2012 caused corresponding revenue losses is indisputable.

Much less certain, however, is the effect of the volume losses on postal costs. Almost all attributable costs are volume-variable costs, and under normal circumstances, the reasonable expectation is that changes in volume will lead to approximately proportional changes in those costs estimated to be volume variable. For example, for the portions of estimated unit attributable costs that are labor costs, the expectation is that, as fewer mail pieces are entered, the Postal Service can reduce its workhours in response to the volume declines. If that occurs, then the achievable cost savings can keep pace with the inevitable revenue losses, thereby leaving the assumptions underlying the reported unit contribution essentially intact. Consequently, directly using the reported unit contribution in the conversion calculations is, under normal circumstances, a convenient computational shortcut that effectively encapsulates what in reality are two distinct financial effects of volume changes – the effect on revenues and the effect on costs.

Unfortunately, despite the fact that expectations regarding proportional changes in accrued costs might have been reasonable under normal circumstances, the circumstances in 2008-2009 were anything but normal. As amply illustrated by the chart on page 43 of Order No. 547, the total volume losses during this period exceeded, by many orders of magnitude, volume losses experienced at any time since the Postal Reorganization Act's passage. The pace at which volumes were disappearing precluded any realistic ability on the part of the Postal Service to shed costs at the same pace. In simple terms, the assumption upon which any conversion methodology relying directly on reported unit contribution is premised – that the drop in revenue is *necessarily* offset by a proportionate drop in costs – is plainly untenable when applied specifically in FY2008 and FY2009.

Moreover, the Postal Service's inability to match volume declines with corresponding attributable cost declines in FY2008 and FY2009 was in no sense an unexplored phenomenon when Order No. 1926 was prepared at the end of 2013. The Commission itself essentially drew the same conclusion more than three years earlier in the first exigent case.[48] The Commission presented Figure 1 on page 83 of Order No. 547 as evidence that drops in volume in every quarter throughout FY2008 and FY2009 substantially outpaced drops in workhours. On page 86, the Commission further noted that Total Factor Productivity (TFP) declined in FY2008 and FY2009 "due to volume losses." All of this analysis from Order No. 547 is consistent with the simple reality that, once volume losses reach a certain velocity, the premise that the Postal Service can directly capture cost savings from each additional lost piece of mail equivalent to the conventionally-estimated unit attributable cost for that piece of mail no longer holds. The figures presented on pages 81-86 of Order No. 547 confirm that, under the extreme circumstances manifested in FY2008 and FY2009, that assumption will substantially overstate the effect of actual volume losses on actual cost reductions during the core years of the volume collapse.[49]

There are two closely related consequences of these factors on PostCom's proposed alternative to focus very specifically upon the financial effects in the year in which the volume losses were incurred. First, when attempting to address the consequences of volume losses on net contribution from *underwater products*, specifically (and, in the instance of Standard Mail, exclusively) in the years of FY2008

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[48] Order No. 547 at 81-86.

[49] Indeed, as the Commission recognized in its FY2013 Financial Analysis, the fact that it was not until FY2013 that attributable costs began falling faster than volume underlies our position that FY2013 is the year when the Postal Service adjusted to the "new normal."

and FY2009, the assumption that the known revenue losses for underwater products are actually more than offset by "expected" cost reductions is inappropriate.[50] Chief Financial Officer Joseph Corbett alluded to this exact situation during his appearance on August 10, 2010 in the first exigent case.[51] Even in the context of underwater products, such an assumption runs directly contrary to the drastic circumstances in FY2008-2009 acknowledged on pages 81-86 in Order No. 547.

Second, and more importantly, the consequences of the dire conditions in those years are not limited to underwater products. For *every product*, including those with healthy cost coverages, PostCom's proposed use of year-specific unit contribution implicitly assumes that, as the Postal Service lost each additional piece of mail volume in 2008-2009, the Postal Service was able to continue to further adjust operations to reduce costs in response to those mounting volume losses. That assumption is built into the methodology which directly applies unit contribution to derive total contribution losses, as opposed to separate examination of the components of unit contribution, revenue and cost. To the extent that the Postal Service was unable to maintain actual cost reductions in 2008-2009 at a pace commensurate with actual revenue reductions, relying directly on reported year-specific unit contributions, as PostCom now proposes, ***necessarily understates the net contribution loss*** associated with the pieces identified by the Commission as lost due to the Great Recession in those years. Moreover, as over 85 percent of the total Great Recession volume loss acknowledged

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[50] For example, in the new PostCom workbook, tab Summary, the entries in the 2008 and 2009 columns for Standard Flats, Standard Parcels, and Periodicals essentially reflect a claim that the net effect of revenue reductions and associated accrued cost reductions for those categories actually saved the Postal Service hundreds of millions of dollars, when in reality such alleged net benefits in those core years of the Great Recession are, as CFO Corbett essentially suggested, merely illusory.

[51] Docket No. R2010-4, Tr. 1/77-78, 82.

by PostCom (after the effects of "count once" are reversed) occurred precisely within the 2008-2009 period, the potential for substantial understatement of the total lost contribution (i.e., the $2.826 billion estimate now proffered by PostCom) is indisputable.

In fact, the Postal Service not only issued previous warnings about the troubling inaccuracies likely to be introduced by simplistic reliance on unit contribution figures to convert 2008-2009 volume losses to total contribution losses, but had actually presented quantitative analysis to show the potential magnitude of the problem. The Postal Service addressed this topic in detail during the remand phase of the first exigent case.[52] As stated therein:

> An equally fundamental limitation of [computations based directly on unit contribution] arises from the fact that, as noted earlier, the staggering amounts of volume lost in FY2008 and FY2009 made it impossible for the Postal Service to shed costs as fast as it was losing volume and revenue, although the Postal Service did shed its volume variable costs as quickly as it could. . . . For FY2008 and FY2009, however, accrued costs did not fall at anywhere near the rate suggested by the product of lost volumes and unit cost estimates, and harm measures based simply on presumed unit contributions are likely to be materially underestimated for those years in particular. And even to the extent the Postal Service was subsequently able to adjust to the new, lower level of volume, the additional contribution lost during periods such as FY2008 and FY2009 (when cost reductions lagged revenue declines) [is] never regained.[53]

In that earlier pleading, to approximately quantify the effect of the implicit overstatement of attributable cost savings, the Postal Service used the same 2008-2009 volume loss figures it had used elsewhere in that document for presentation of a similar exercise to quantify expected lost contribution. The quantification first employed actual FY2008 and FY2009 First-Class Mail and Standard Mail RPW volume loss figures

[52] *See* Initial Comments of the United States Postal Service Regarding Court Remand, Docket No. R2010-4R (July 25, 2011) at pages 47-50.

[53] *Id.* at 47.

(which earlier in the document generated an FY2009 aggregate lost contribution estimate of $3.7 billion), in combination with the unit attributable costs by product from the FY2009 ACD (which was also the source of the unit contribution figures used in the earlier exercise).[54] The result showed that for the aggregate lost contribution estimate of $3.7 billion to be realized, the same volume losses (over 34 billion pieces of First-Class Mail and Standard Mail combined) would need to have led to $7.5 billion in reduced attributable costs.[55]

Next, these presumed or "expected" attributable cost reductions of $7.5 billion were compared with actual attributable cost reductions. Contemplating actual volume losses that occurred over the FY2008-FY2009 time period, the cost comparison starts in FY2007. Using Table IV-A-1 on page 24 of the FY2007 ACD, attributable costs in the aggregate for First-Class Mail and Standard Mail products were $32.3 billion.[56] Therefore, the salient question becomes, was the Postal Service in FY2009 able to reduce attributable costs for the same products by $7.5 billion below the FY2007 levels, in response to the unprecedented volume losses? Examining Table IV-5 on pages 29-30 of the FY2009 ACD, the answer is a resounding "No." Aggregate attributable costs for the corresponding products in FY2009 were $29.4 billion, meaning that the cost reduction from $32.3 billion in FY2007 to $29.4 billion in FY2009 is only $2.9 billion, well under one-half of the "expected" $7.5 billion.[57] In fact, the actual reduction of $2.9 billion was only 38 percent of the "expected" amount.

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[54] As explained at the time, the exercise was limited to First-Class Mail and Standard Mail to keep it tractable, and because the material effects occurred in those two classes.

[55] *Id.* at 49 (Table Six, Column 3) (Table Six is reproduced on the next page).

[56] *Id.* (Table Six, Column 5).

[57] *Id.* (Table Six, Columns 4 and 6).

TABLE SIX: **EXPECTED COST REDUCTIONS (FY07-FY09) VS. ACTUAL COST REDUCTIONS**

Service Category =================================	FY07-FY09 Vol Change From RPW (000) (1)	FY09 Unit Att Cost (2)	FY07-09 Att Cost Reduction Expected From Volume Change ($000) (3)=(1)*(2)	FY09 Att Costs From FY09 ACD ($000) (4)		FY07 Att Costs From FY07 ACD ($000) (5)	Actual FY07-09 Att Cost Difference ($000) (6)=(4)-(5)
First-Class Mail:							
Single-Piece Letters	(6,408,004)						
Single-Piece Cards	(524,733)						
Total Single-Piece Letters and Cards	(6,932,737)	$ 0.264	$ (1,830,243)	$ 8,342,019			
Presort Letters	(4,241,263)				FC Letters	$ 18,324,235	
Presort Cards	(530,275)				FC Cards	$ 791,920	
Total Presort Letters and Cards	(4,771,538)	$ 0.117	$ (558,270)	$ 5,645,481			
Flats	(1,207,898)	$ 0.753	$ (909,547)	$ 2,157,510			
Parcels	29,777	$ 1.886	$ 56,160	$ 1,095,175			
Total First-Class Mail	(12,882,395)		$ (3,241,900)	$17,240,185		$ 19,116,155	$ (1,875,970)
Standard Mail:							
High Density and Saturation Letters	(434,783)	$ 0.063	$ (27,391)	$ 318,152			
High Density and Saturation Flats & Parcels	(1,303,961)	$ 0.067	$ (87,365)	$ 825,642			
Carrier Route	(5,809,469)	$ 0.160	$ (929,515)	$ 1,585,576	ECR+NECR	$ 3,188,202	
Letters	(8,573,897)	$ 0.109	$ (934,555)	$ 5,105,483			
Flats	(5,078,686)	$ 0.448	$ (2,275,252)	$ 3,497,110			
Not Flat-Machinables and Parcels	15,292	$ 1.237	$ 18,916	$ 840,001	StdReg+NP	$ 9,964,963	
Total Standard Mail	(21,185,505)		$ (4,235,162)	$12,171,964		$ 13,153,165	$ (981,201)
TOTAL FCM & STANDARD	(34,067,900)		$ (7,477,062)	$29,412,149		$ 32,269,320	$ (2,857,171)
					COST REDUCTION SHORTFALL $(000):		**$ (4,619,891)**
					(Expected Minus Actual)		

SOURCES:
FY08 and FY09 RPW
FY09 ACD (March 29, 2010), Pages 29-30, Table IV-5
FY07 ACD (March 27, 2008), Page 24, Table IV-A-1
See also tab three of Excel file (Direct.Quant.Exgnt.Harm.xls) attached to this document

As the Postal Service discussed in the first remand document,[58] there are potentially a variety of reasons why an exact match between “expected” attributable costs savings and “actual” attributable cost savings might not be expected. Particularly comparing costs across years, a non-trivial amount of variation might be common. Moreover, as volumes change, it should be anticipated that marginal costs might change. Nevertheless, the mismatch shown in the 2008-2009 exercise was huge ($7.5 billion minus $2.9 billion, or $4.6 billion). In the context of this proceeding, in which, based almost entirely on 2008-2009 volume losses, PostCom’s total contribution loss estimate is only $2.8 billion, this shortfall of $4.6 billion looms very large indeed.

It could plausibly be wondered whether the result of the Table Six exercise truly reflects the atypical nature of the FY2008-2009 period, or might occur instead because the structure of the exercise is too flawed to yield reasonably matching results over any period of time. To test the latter suggestion, the exercise was replicated using volume losses from the FY2013-2014 period, a period over which the aggregate volume decline for the two classes was only 3 percent (in contrast with a comparable volume decline in the 2008-2009 period of over 17 percent). The results, shown in the following table, reveal that in the more recent period, and unlike FY2008-2009, the “expected” attributable cost changes and the actual attributable cost changes do correspond much more closely.[59] Compared with aggregate First-Class Mail and Standard Mail “expected” cost reductions that were well over two and a half times as large as actual

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[58] *Id.* at 48.

[59] This result, of course, is entirely in accord with the chart from page 2 of the Commission’s FY2013 Financial Analysis Report (reproduced on page 16 of the Postal Service’s Initial Comments) that shows attributable cost declines trailing volume declines by huge margins in 2008 and 2009, trailing by smaller amounts in 2010-2012, and only finally surpassing the volume decline in 2013.

savings in the FY2008-2009 exercise, the “expected” cost reductions in the FY2013-2014 exercise were more in the neighborhood of 10 percent lower than the actual cost savings, with the absolute value of the difference around $250 million. Logically, it is very clear that the FY2008-2009 exercise is fundamentally reflecting the unavoidable effects of the extreme challenges posed by the precipitous volume freefall compressed into that relatively short time period.

No matter what other factors might have been at play, two ineluctable conclusions follow from this quantification analysis. First, the Postal Service during FY2008 and FY2009 was clearly not able to respond to volume (and revenue) plunges with anything near commensurate cost reductions, despite the significant savings that were achieved consistent with its exercise of “honest, efficient, and economical management.” Second, and more critical to this discussion, any methodology which, under the catastrophic circumstances of FY2008 and FY2009, simplistically attempts to measure the financial harm from any set of estimated lost volumes as the lost volume for each mail product multiplied by the “expected” contribution by mail product would necessarily and dramatically understate the financial harm over those years. PostCom now proposes, however, to rely on exactly such a biased methodology, notwithstanding the warning provided by the Postal Service of the perils of such reliance nearly four years ago.

Given the opportunity to respond, PostCom might retreat to the observation that its proposed methodology is no more biased downward now than when that methodology was utilized by the Postal Service for illustrative purposes in its December 2013 Reply Comments. Such an observation, however, would fail to take account of

FY2012 - FY2014: "EXPECTED" COST DIFFERENCE VERSUS ACTUAL COST DIFFERENCE

	(1) FY14 Att Costs	(2) FY14 Unit Costs	(3) FY14 Vol	(4) FY12 Att Costs	(5) FY12 Vol	(6) = (3)-(5) FY12-FY14 Vol Differ	(7) = (6)*(2) FY12-FY14 Expected Cost Dif	(8) = (1)-(4) FY12-FY14 Actual Cost Dif
First-Class Mail:								
Single-Piece Letters..	**$5,710.3**	**$0.277**	**20,599,374**	**$6,276.0**	**22,755,167**	**-2,155,794**	**$ (597,607)**	**$ (565,704)**
Single-Piece Postcards..	**266.5**	**0.288**	**924,941**	**297.1**	**1,158,305**	**-233,364**	**$ (67,236)**	**$ (30,572)**
Total Single-Piece Letters and Cards.............	**5,976.8**	**0.278**	**21,524,315**	**6,573.1**	**23,913,473**	**-2,389,158**	**$ (664,843)**	**$ (596,276)**
Presort Letters...	**4,560.0**	**0.120**	**37,995,003**	**4,949.3**	**39,930,761**	**-1,935,758**	**$ (232,323)**	**$ (389,252)**
Presort Cards...	**184.2**	**0.084**	**2,198,318**	**214.8**	**2,588,140**	**-389,822**	**$ (32,662)**	**$ (30,596)**
Total Presort Letters and Cards......................	**4,744.2**	**0.118**	**40,193,321**	**5,164.1**	**42,518,902**	**-2,325,581**	**$ (264,985)**	**$ (419,847)**
Flats..	**1,566.1**	**0.879**	**1,782,673**	**1,791.0**	**2,049,176**	**-266,503**	**$ (234,125)**	**$ (224,948)**
Parcels...	**542.8**	**2.328**	**233,115**	**659.1**	**293,413**	**-60,297**	**$ (140,390)**	**$ (116,388)**
First-Class NSAs..	**12.6**	**0.123**	**103,014**	**27.5**	**209,577**	**-106,563**	**$ (13,074)**	**$ (14,892)**
Outbound Single-Piece First-Class Mail Int'l.......	**188.4**	**0.874**	**215,536**	**438.5**	**263,548**	**-48,012**	**$ (41,970)**	**$ (250,132)**
Inbound Single-Piece First-Class Mail Int'l..........	**249.3**	**1.029**	**242,238**	**199.5**	**201,718**	**40,520**	**$ 41,704**	**$ 49,816**
Total First-Class..	**13,280.3**	**0.207**	**64,294,213**	**14,852.9**	**69,449,806**	**-5,155,593**	**$ (1,317,683)**	**$ (1,572,668)**
								$ -
Standard Mail:								**$ -**
High Density and Saturation Letters...................	**369.7**	**0.062**	**5,970,133**	**347.0**	**5,563,559**	**1,296,722**	**$ 80,301**	**$ 22,733**
High Density and Saturation Flats and Parcels...	**881.1**	**0.078**	**11,278,633**	**900.1**	**11,770,275**	**-491,642**	**$ (38,407)**	**$ (19,049)**
Carrier Route..	**1,685.7**	**0.188**	**8,980,116**	**1,720.6**	**9,119,946**	**-139,830**	**$ (26,248)**	**$ (34,928)**
Letters...	**4,895.4**	**0.103**	**47,571,876**	**5,045.5**	**46,146,863**	**1,425,013**	**$ 146,641**	**$ (150,125)**
Flats..	**2,497.0**	**0.494**	**5,054,395**	**2,761.7**	**5,939,635**	**-885,240**	**$ (437,332)**	**$ (264,662)**
Parcels...	**102.5**	**1.557**	**65,846**	**337.9**	**303,559**	**-237,713**	**$ (370,180)**	**$ (235,314)**
Standard Mail NSAs...	**63.3**	**0.112**	**566,251**	**103.9**	**952,844**	**-386,593**	**$ (43,215)**	**$ (40,586)**
Every Door Direct Mail Retail..............................	**39.3**	**0.044**	**890,148**	**-**			**$ -**	**$ 39,302**
Total Standard Mail...	**10,534.0**	**0.131**	**80,377,398**	**11,216.6**	**79,796,680**	**580,718**	**$ (688,441)**	**$ (682,629)**
Total FCM & Standard...			144,671,611		149,246,486		**$ (2,006,124)**	**$ (2,255,297)**
			-3.1%					
							Difference	**$ (249,173)**

Note: FY12-FY14 HD & Sat Lttrs volume difference is the difference between FY12 HD & Sat Lttrs, and FY14 HD & Sat Lttrs plus FY14 EDDM

Sources: Cols (1), (2), & (3) from FY14 CRA, USPS-FY14-1 (Dec. 29, 2014)
Cols (4) & (5) from FY12 CRA, USPS-FY12-1 (Revised, Cover date of January 10, 2013)

the glaring differences between the circumstances then and now. As clearly articulated on pages 19-20 of those Postal Service Reply Comments, the Postal Service was presenting its analysis to show that if you focus on the cumulative Great Recession loss (which was not the framework the Postal Service adopted for either of its exigent filings), by the Postal Service's estimate, the cumulative loss would still be growing by a substantial margin each year even *after* implementation of the requested increase. The Postal Service suggested that this conclusion held even if its estimates were off by a factor of two or three.[60] In that specific context, the Postal Service had no compelling need to complicate its analysis by delving into the inadequacies of application of the reported FY2008 and FY2009 unit contributions merely in order to reach the further conclusion that the situation was even that much more dire than its estimates already indicated.[61]

In addition to those considerations, the most significant and obvious difference is that, compared to the PostCom total loss volume estimate of which over 85 percent consists of volume lost in specifically in the 2008-2009 period, less than 25 percent of the total 2008-2012 lost volume estimates in the Postal Service December 2013 spreadsheets were rooted in 2008-2009, and less than 15 percent of the 2008-2014 losses were rooted in that period. In that respect, the relative insignificance of the 2008-2009 estimates in the Postal Service exercise was virtually the exact inverse of their overwhelming importance within the PostCom conversion alternative. By greatly

[60] Postal Service Reply Comments (Dec. 6, 2013) at 19.

[61] In other words, nothing the Postal Service could have done then to refine its estimates of actual lost contribution in FY2008 and FY2009 would have had any effect on the actual relief that it was seeking, which certainly is not the case with PostCom's unabashed attempt to reduce the relief that would otherwise be afforded using the Order No. 1926 conversion methodology that was not challenged on appeal.

confining the scale and scope of the estimated losses, and thereby shifting the primary focus to FY2008 and FY2009, Order No. 1926 automatically called into question strict reliance on the "expected" unit contribution method for its intended purpose. PostCom, when proposing to move even further in that direction by switching to year-specific reported unit contribution values, has inexplicably failed to take account of the particular circumstances prevailing in those years.

The Commission has essentially two viable options at this point with respect to the contribution conversion methodology. One option would simply be to stick with the methodology adopted and explained on pages 101-106 of Order No. 1926, which went unchallenged on appeal, and which involves uniform application of the FY2014 unit contributions as the most relevant "apples-to-apples" comparison. Another option would be to switch to year-specific unit contribution estimates, along the lines that PostCom proposes, but also making suitable, rational, and necessary adjustment to the estimates for 2008 and 2009 to attempt to take account of actual real world conditions in those years. The manner by which such an adjustment could be made is explained below. Plainly, however, one option that is *not* rationally available to the Commission is to follow the PostCom proposal and to switch to year-specific reported unit contribution estimates, while totally ignoring the undeniable understatement of harm such a procedure would produce in the two critical years of FY2008 and FY2009. Abandoning the procedure adopted in Order No. 1926 and substituting the alternative that PostCom offers, particularly when done (as PostCom proposes) as the means by which to circumvent the effect of the court's vacation of the "count once" rule, would be utterly indefensible.

4. Appropriately Adjusting Reported Unit Contributions in FY2008 and FY2009 Results in a Much Higher Estimate of Financial Harm for the Volume Losses PostCom Acknowledges Than the Corresponding Estimate Shown in the Postal Service's Motion to Suspend

The Postal Service's Motion to Suspend (and its Initial Comments) identified a cumulative estimate of lost volume when the "count once" rule is reversed, and using the same uniform FY2014 unit contributions applied in Order No 1926, showed the resulting estimate of financial harm at $4.0 billion. PostCom, using the exact same volumes, proposes to use year-specific reported unit contributions, and claims the result is a financial harm estimate of only $2.8 billion. However, for the reasons discussed above, the procedure PostCom proposes is fatally flawed, because any use of year-specific unit contributions to quantify the financial effects of Great Recession volume losses in FY2008 and FY2009, for the purpose of limiting the amount of exigent surcharge revenue that the Postal Service is entitled to recover, requires substantial adjustments to the reported unit contribution for those years.

The process by which such adjustments can be accomplished is relatively straightforward. Underestimating contribution loss in FY2008-FY2009 can be avoided by restricting the percentage of attributable costs subtracted from revenue in order to approximate an "actual" unit contribution effect associated with lost mail volume. For example, the implicit default assumptions applied when a piece of volume is lost are that the amount of revenue lost is equal to 100 percent of the reported unit revenue, and the corresponding cost reduction is equal to 100 percent of reported unit cost. Since reported unit contribution is already calculated as reported unit revenue minus reported unit costs, the convenient shorthand calculation for overall lost contribution is lost volume times reported unit contribution. When circumstances are such as they were in FY2008-FY2009, however, and there is no reason to believe that actual unit attributable costs fall by 100 percent of reported unit attributable costs when an additional piece of volume is lost, the default assumption of 100 percent can be replaced with a more realistic figure. The calculations discussed above indicate that “actual” costs associated with the *total* volume decline in FY2008-FY2009 fell to approximately 38 percent of the “expected” amount (i.e., what would be expected using the default assumption of 100 percent). Therefore, it is reasonable to apply a percentage approximating that amount when attempting to estimate the actual costs reduction (and thus indirectly the actual lost contribution) associated with the *subset* of the total volume loss which has been identified as lost due to the Great Recession.

A reasonable approximation of 38 percent is to round it up to 40 percent. To confirm that such an amount is in the right ballpark, the Table Six exercise shown above (comparing the actual versus expected attributable costs changes from FY2007 to FY2009) can be replicated with the only change being the reduction of the FY2009 unit attributable costs inputs to 40 percent of the value used in Table Six. The results of this modification of the Table Six exercise are shown below. What in Table Six had been a shortfall between expected and actual of $4.6 billion is reduced with this modification to $134 million. Applying a 40 percent capture rate for unit attributable costs over the FY2008-FY2009 period is therefore the most reasonable adjustment to make to the year-specific unit contributions for those two years.

MODIFIED TABLE SIX: EXPECTED COST REDUCTIONS (FY07-FY09) USING 40% of FY09 UNIT COSTS VS. ACTUAL COST REDUCTIONS

Service Category ================================	FY07-FY09 Vol Change From RPW	FY09 Unit Att Cost	40% of FY09 Unit Att Costs	FY07-09 Att Cost Reduction Expected From Volume Change	FY09 Att Costs From FY09 ACD		FY07 Att Costs From FY07 ACD	Actual FY07-09 Att Cost Difference
	(000) (1)	(2)	(3)=(2)*.4	($000) (4)=(1)*(3)	($000) (5)		($000) (6)	($000) (7)=(5)-(6)
First-Class Mail:								
Single-Piece Letters	(6,408,004)							
Single-Piece Cards	(524,733)							
Total Single-Piece Letters and Cards	(6,932,737)	$ 0.264	$ 0.106	$ (732,097)	$ 8,342,019			
Presort Letters	(4,241,263)					FC Letters	$ 18,324,235	
Presort Cards	(530,275)					FC Cards	$ 791,920	
Total Presort Letters and Cards	(4,771,538)	$ 0.117	$ 0.047	$ (223,308)	$ 5,645,481			
Flats	(1,207,898)	$ 0.753	$ 0.301	$ (363,819)	$ 2,157,510			
Parcels	29,777	$ 1.886	$ 0.754	$ 22,464	$ 1,095,175			
Total First-Class Mail	(12,882,395)			$ (1,296,760)	$17,240,185		$ 19,116,155	$ (1,875,970)
Standard Mail:								
High Density and Saturation Letters	(434,783)	$ 0.063	$ 0.025	$ (10,957)	$ 318,152			
High Density and Saturation Flats & Parcels	(1,303,961)	$ 0.067	$ 0.027	$ (34,946)	$ 825,642			
Carrier Route	(5,809,469)	$ 0.160	$ 0.064	$ (371,806)	$ 1,585,576	ECR+NECR	$ 3,188,202	
Letters	(8,573,897)	$ 0.109	$ 0.044	$ (373,822)	$ 5,105,483			
Flats	(5,078,686)	$ 0.448	$ 0.179	$ (910,101)	$ 3,497,110			
Not Flat-Machinables and Parcels	15,292	$ 1.237	$ 0.495	$ 7,566	$ 840,001	StdReg+NP	$ 9,964,963	
Total Standard Mail	(21,185,505)			$ (1,694,065)	$12,171,964		$ 13,153,165	$ (981,201)
TOTAL FCM & STANDARD	(34,067,900)			$ (2,990,825)	$29,412,149		$ 32,269,320	$ (2,857,171)

COST REDUCTION SHORTFALL $(000): $ (133,654)
(Expected Minus Actual)

SOURCES:
FY08 and FY09 RPW
FY09 ACD (March 29, 2010), Pages 29-30, Table IV-5
FY07 ACD (March 27, 2008), Page 24, Table IV-A-1

As shown in the Excel file accompanying these Reply Comments,[62] if the 100 percent assumption is replaced in just those two year with an assumption of 40 percent (but still applying 100 percent in all subsequent years), the estimated lost contribution associated with the 35.1 billion piece volume loss is $5.712 billion. That is *substantially higher* than the lost contribution estimate of $3.957 billion submitted by the Postal Service in its Motion to Suspend and Initial Comments, obtained using the same volumes, but uniformly applying the FY2014 unit contribution estimates applied by the Commission in Order No. 1926. It is also *more than double* the estimate of $2.8 billion that PostCom erroneously identifies. The effects of the underestimation implicit in PostCom's calculations are clearly far too large to be ignored.

Moreover, the demonstration of a substantial underestimation is by no means dependent on an assumption of 40 percent for the capture rate. Although 40 percent is the capture rate most in accord with the observed attributable cost shortfall, higher capture rates can be applied as well.[63] The table below shows the effects of applying a range of capture rates, not only to the lost volume estimates associated with merely reversing count once (Scenario One), but also to the lost volume estimate identified by the Postal Service in its Initial Comments as the most reasonable compilation of the Great Recession lost volume figures presented in the Commission spreadsheets (Scenario Two), and the less comprehensive alternative in which the Standard Mail losses in FY2009 are carried over to FY2010 (Scenario Three).

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[62] *See* Reply.MPA.Unit.Contribution.xls.

[63] Computationally, in each year FY2008 and FY2009, the "actual" unit contribution is calculated as the ACD unit revenue minus an amount equal to the ACD reported unit attributable cost multiplied by the specified capture percentage.

EFFECTS OF APPLYING YEAR-SPECIFIC UNIT CONTRIBUTIONS			
	Scenario One (35.1B pieces)	Scenario Two (105.7B pieces)	Scenario Three (56.0B pieces)
Capture Rate			
40 Percent	$ (5,711.71)	$ (11,085.28)	$ (7,051.10)
50 Percent	$ (5,230.79)	$ (10,605.48)	$ (6,571.30)
66.67 Percent	$ (4,429.09)	$ (9,805.66)	$ (5,771.48)
75 Percent	$ (4,028.48)	$ (9,405.99)	$ (5,371.81)
Scenario One: Count Once Reversed (COR)			
Scenario Two: COR, Carry All Classes Through FY2012			
Scenario Three: COR, Carry Standard Mail Through FY2010			

As can be seen in the table, at each capture rate shown, the Scenario One value (using the same volume that PostCom uses) is not only substantially higher than the estimate advanced by PostCom, *but is also actually higher than the $3.96 billion estimate derived using the FY2014 unit contribution* (as shown in the Motion to Suspend). That holds true even at a capture rate of 75 percent, or roughly double the optimal capture rate of 38 percent actually derived in the Table Six exercise. In reality, therefore, when conducted with necessary and appropriate adjustments, the year-specific approach now favored by PostCom would result in a higher estimate of cumulative lost contribution than the uniform FY2014 approach employed in Order No. 1926 when matched to the lost volume estimates upon which the PostCom calculations are premised.

For all of the reasons explained in the Postal Service's Initial Comments, however, the volume estimates that PostCom uses are themselves way too low. When applied to the two more reasonable lost volume estimates identified by the Postal Service in its Initial Comments, the results of a switch to year-specific unit contributions are more mixed. As emphasized above, the reported unit contributions in this procedure are adjusted only in FY2008 and FY2009, and therefore no adjustments have been made in the reported unit contributions for subsequent years. Therefore, in Scenario Two above, in which the demonstrable effects of the Great Recession are appropriately allowed to carry over for all classes through 2012, the effects of the adjustments in the two earliest years are relatively more muted. For each capture rate applied, the Scenario Two cumulative lost contribution estimates would be noticeably lower than the $11.431 billion estimate provided on page 30 of the Postal Service Initial Comments (derived using the uniform FY2014 unit contributions).

Scenario Three, associated with the lost volume estimated by reversing "count once" and by harmonizing the "new normal" for Standard Mail with the FY2010 "new normal" used for First-Class Mail in Order No. 1926, falls in between. At a capture rate of 66.67 percent, the estimated lost contribution (just under $5.8 billion) is roughly the same as the estimate of $5.8 billion derived for this scenario on page 36 of the Postal Service's Initial Comments. At capture rates higher than that (*e.g.*, 75 percent), the cumulative harm estimate using year-specific unit contributions is lower than the Scenario Three estimate of $5.8 billion using the FY14 unit contributions. In contrast, at capture rates lower than that (e.g., 50 percent, 40 percent), the year-specific Scenario Three estimates are higher than that figure. Of course, all of the Scenario Two and Three volume estimates, regardless of which approach to the conversion process is used, generate cumulative contribution loss estimates well in excess of the Scenario One estimates, whether those Scenario One estimates are derived applying the uniform

FY2014 unit contributions, or the unadjusted year-specific contributions *misapplied* by PostCom.

* * *

To summarize, PostCom has failed in its attempt to find a silver bullet to eviscerate the effects of the reversal of "count once." In most respects, even if the Commission were inclined to travel down the pathway that PostCom tries to blaze at this late date, PostCom would merely be hoisted on its own petard. If year-specific unit contributions are to be employed for the conversion process specifically to determine the duration of the exigent surcharge, the reported unit contributions must be adjusted for the years 2008 and 2009. Consequently, in the scenarios in which volume losses for those two years predominate (*i.e.*, Scenarios One and Three), the actual correct effect of a switch to year-specific contributions would be to *increase* the resulting overall estimate of net financial harm.[64] Neither PostCom nor the Commission are at liberty either to ignore or to fail to take into account the tangible inability of the Postal Service, in the face of the sudden disappearance of massive amounts of volume in those two years, to adjust accrued costs in the same manner assumed under normal circumstances.

[64] While that would certainly be a defensible approach to approaching contribution, the Postal Service's position remains that using FY2014 unit contribution – *i.e.*, the approach adopted in Order No. 1926 and not challenged by anyone on appeal – remains a reasonable method of assessing the financial harm to the Postal Service caused by the volume losses.

B. <u>GCA's Argument that the Proposed Correction of the "Count Once" Error Fails to Account for Mailpieces that May Have Been Lost in Subsequent Years Due to Something other than the Recession is Deeply Flawed and Would Not Significantly Change the Number of Pieces Lost "Due to" the Great Recession.</u>

In its Initial Comments at pages 33-35, the Postal Service identified and addressed an issue that was never directly broached by the Commission in its multiple Information Requests or in Order No. 1926, but was instead first raised in the Commission's subsequent defense of the "count once" rule in court. The issue involves "overlap" pieces – lost pieces that are among those that the models would attribute to the macro effects of the Great Recession in one year, but by chance might also be among the pieces that would have been lost to electronic diversion anyway in some subsequent year, even without the Great Recession. Such overlap pieces are thus actually missing for *dual* reasons in the subsequent years, but, as the Postal Service observed on page 34, they could in the abstract at least arguably be excluded from the count of Great Recession pieces.

In its initial comments, GCA picks up the "overlap" ball and tries to run with it.[65] First, GCA argues that the "overlap" issue leads to the Postal Service claiming, even after the Commission has severely reduced its earlier estimates, "substantially" more volume losses than were actually caused by the Great Recession.[66] Second, GCA proposes an additional counting procedure that would specifically identify "overlap" pieces and remove them from the Great Recession total. GCA, however, does not

[65] GCA Initial Comments at 4-11.

[66] *Id.* at 4.

bother to apply its proposal, even while suggesting that such application "can easily be undertaken using the results from the Commission's approved econometrics."[67]

Fundamentally, for the reasons stated in its Initial Comments and reiterated below, the Postal Service strongly rejects the contention that any of the various alternative Great Recession harm estimates the Postal Service identified in its Initial Comments run any risk whatsoever of overstating the effects of the Great Recession. Ironically, GCA is making this contention in the context of the alternative presented that by far attributes the fewest lost pieces to the Great Recession – the estimates that do nothing more than reverse the effects of "count once." Given the massive amount of volume losses already excluded by the Commission from the Great Recession count, any further reduction specifically to identify and remove overlap pieces would be completely redundant. Nonetheless, as discussed below, even if one were inappropriately to attempt to further reduce the lost volume estimates based on implementation of the general procedure GCA outlines, the effects would be far smaller than GCA insinuates. There is no justifiable basis to further reduce the Postal Service's estimates merely to account for the overlap issue.

1. GCA's Setup of Its Overlap Proposal Seriously Garbles the Relevant Background By Distorting the Econometric Model

GCA attempts to denigrate the simple analysis presented by the Postal Service to reverse the effects of the vacated "count once" rule by labelling it as the "count every piece every year" approach.[68] GCA erroneously claims that the Postal Service "has not

[67] *Id.* at 11.

[68] *Id.* at 6-10. Although "count every piece every year" is a catchy phrase, and may even be useful for purposes of discussion, the Postal Service categorically rejects the implication that its approach actually pursues that objective. As just one example, the Commission's own spreadsheet (LR-1, Summary tab, cells E7:F7, E8:F8, and E11:F11) reflects volume losses in both 2011 and 2012 for Single Piece Letters,

proved that counting 'every piece every year' is a correct way to interpret the results of the econometric model"[69] because, according to GCA, that approach is based on an "assumption" rather than "an outcome driven by the econometric model."[70] GCA, apparently, does not understand how the econometric model works.

To simplify, consider an econometric-based forecasting model that estimates an elasticity coefficient for a factor – it can be any factor, but we will call it "Macro" for the sake of simplicity – and then uses that elasticity (which for simplicity we will set at 1.0), starting with mail volume in the base year volume (YB), to project the effects of that factor for the next three years (Y1, Y2, and Y3). Recall that the mathematics of the model are the same whether we are forecasting or backcasting. The effect on mail volume each year due to this factor (because we have conveniently set the elasticity at 1.0) is the percentage change in the value of the Macro variable that year relative to the value of the Macro variable in the base year.[71] Thus, for example, if the Macro variable is 5 percent below YB in Y1, and 15 percent below YB in Y2, and 20 percent below YB in Y3, then the effect on volume in Y1 is a 5 percent reduction from the YB volume, in Y2 is a 15 percent reduction from the YB volume, and in Y3 is a 20 percent reduction from the YB volume. This relationship, across all of the variables, is what allows the

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Single Piece Cards, and Parcels -- losses that the Commission itself describes as "due to the Factors related to the Great Recession." (In LR-1, these losses originate in the previous VolumeCalc tab in the Employment column, carry over into the Total Macro column, and then reappear in the subsequent Summary tab, but are not counted.) Notwithstanding this unambiguous acknowledgement that these pieces were indeed lost due to the Great Recession, the Postal Service has not "counted" any of those pieces in *any* of the three scenarios presented in its Initial Comments, including the scenario (reverse "count once") that GCA purports to be challenging.

[69] GCA Initial Comments at 7-8.

[70] *Id.* at 9.

[71] The actual formula can be seen as Equation 2 on page 6 of the Thress Direct Testimony (USPS-T-7) in Docket No. R2006-1 (May 3, 2006), in which volume in any period t is the base period volume times the ratio of the value of the variable in period t to the value of the variable in the base period, raised to the power of the elasticity coefficient.

model to account for all of the volume changes from YB to Y3. Accordingly, in order to determine the cumulative effects of the Macro variable across all three years, the econometric model *requires* that you add the 5 percent from Y1 to the 15 percent from Y2 to the 20 percent from Y3, for a total cumulative effect across all three years of 40 percent. In this sense, to account for all lost pieces, the econometric model *requires* that you "count every piece every year."

In contrast, the "count once" rule directly contravenes the requirements of the econometric model. In the above example, applying the "count once" rule would lead to the completely erroneous conclusion that the effects of the Macro variable each year were limited to the change in the Macro variable from the previous year, not from the base year. This would mean that the effect in Y1 would (correctly) remain at 5 percent, but in Y2 and Y3 would incorrectly be reduced to 10 percent and 5 percent, respectively. This violates the principles by which the elasticities were estimated – the model observes a Macro variable in Y3 that is actually 20 percent lower, not 5 percent lower, than the Macro variable in YB. The fundamental inconsistency of the "count once" rule with the econometric model is perhaps most evident by observing that, if the "count once" rule were applied to *every* factor affecting mail volume across a multi-year period, the total volume change "counted" would be far less than the actual volume change for which the exercise is intended to account. The sum of the parts would be much less than the whole.

At the most basic level, GCA's misunderstanding of the econometric model is profound, with the result that GCA completely inverts what is assumed and what must be proven.[72] Unless a challenge is intended to the well-established econometric methodology (which GCA does not profess to attempt), the Postal Service does not need to "prove" the validity of the "count every piece every year" approach. That approach, directly contrary to GCA's erroneous claim, is indeed "driven by the econometric model."[73] Therefore, it is any *departure* from the "count every piece every year" approach that must be proven. Moreover, any such departure must be achieved in a way that still accounts for "every piece every year." The "count once" rule, as common sense suggests and the above discussion illustrates, patently fails this most basic requirement of logic.

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[72] The most puzzling example of this is GCA's claim on page 8 that the "count every piece every year" approach used by the Postal Service "assumes, without proving, that all of the lost volume is 'due to' the recession." This claim makes no sense, because the only volume that the Postal Service is "counting every year" to arrive at the estimate that GCA is challenging is the limited subset of volume that the Commission has already accepted as volume lost "due to" the Great Recession. For example, in the instance of First-Class Mail, that is all volume identified by the models as lost due to the effects of the Macro variable (Employment). In essence, GCA is asserting that the cause of such volume losses has not been "proven," when in fact the Commission has expressly already agreed that it was caused by the Great Recession.

[73] Another strange twist occurs when GCA drops a footnote on page 9 to complain that the example of a cable customer who loses her job does not reflect the actual operation of the demand models, because those models examine only gross changes in mail volumes, not mail volumes sent by specified customers. To the extent that GCA is suggesting that the simplifying example was intended to illustrate the intuition behind the model, not its specific operation, that suggestion may have some merit, but it is irrelevant to the argument made by the Postal Service. The model shows that each year, fluctuations in the explanatory variable (relative to the base year) caused specified corresponding fluctuations in mail volume (relative to the base year). Whether it was the same or different mailers in different years, however, has absolutely no relevance to the need to account for all lost pieces in all years. The actual operation of the demand model requires this, which is the piece of the picture that GCA keeps missing. Another aspect of the demand models that appears to elude GCA is that, while the decomposition exercise that Mr. Thress presented in his Statement lays out the sources-of-change year to year, that format is not how the forecasting models themselves are actually constructed. As Mr. Thress explained previously, consistent with his Equation 2 described above, in the Postal Service forecasting methodology, "volume at time t (V_t) is projected to be equal to volume in the base period (V_B) times a series of multipliers of the form $[x_{it}/x_{iB}]^{ei}$ which reflect the extent to which the explanatory variables have changed from the base period to time t." Direct Testimony of Thomas Thress (USPS-T-7), Docket No. R2006-1 (May 3, 2006) at 331. GCA's subtle but persistent attempts to delink the volume forecasts in any given year from any continuing effects of changes in explanatory variables that were first manifest in previous years are fundamentally misguided.

2. GCA Erroneously Attempts to Address the Overlap Issue in Isolation, When Consideration of the Matter in an Appropriately Broader Context Actually Reveals Far More Significant Countervailing Factors

The implicit foundation of GCA's discussion of the overlap issue is that the Commission's sole objective on remand should be to ensure that no means of *reducing* estimates of Great Recession harm have possibly been overlooked, with no consideration of anything else. Like a ratchet, GCA's concept of a remand moves in only one direction – down. In reality, however, the Commission should view its objective as arriving at the most reasonable overall estimate of Great Recession harm, given the totality of the record. In doing so, the Commission should keep in mind the admonitions of Order No. 864 that the Postal Service is not expected to engage in "a quixotic search for perfect proportionality" or "absolute precision," but merely to support its request with credible proof based on the type of statistical information and expert analysis upon which its demand analysis and forecasting methodologies are routinely conducted.[74] Granted, the findings in Order No. 1926 and the court's opinion place significant limitations on the parameters within which reasonable choices can still be made, but in and of themselves those findings should not be viewed as changing the fundamental objective.

As far back as Order No.547 in the first exigent case, the Commission found that "[n]ot only was the recent recession unique in kind and severity in post-war America, its impact on the Postal Service was unique in kind and severity as well."[75] In that context, it is impossible to sustain GCA's insistence that the Postal Service's estimates (most

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[74] Order No. 864 (Sept. 20, 2011) at 49-52.

[75] Order No. 547 (September 30, 2010) at 50.

specifically, its estimate after reversing the effects of “count once”) are necessarily overstated unless an additional adjustment is made to exclude potential overlap pieces. Specifically, GCA’s discussion does not address the likelihood (explained on pages 34-35 of the Postal Service’s Initial Comments) that the estimate with which we are working (for First-Class Mail, based exclusively on the Macro variable) already excludes the significant proportion of pieces actually lost due to the Great Recession, but accounted for only in the models through the linear intervention variables. As stated in the Postal Service Initial Comments:

> In reality, therefore, any theoretical concern that an estimate based exclusively on the macro variables might overstate the loss because of some small fraction of overlap is utterly swamped by the vastly greater probability that the estimate is understated because of the complete exclusion of pieces lost due to unanticipated changes beyond those directly encapsulated in the macro-economic variables.[76]

Once again, a little context puts all of this in much better perspective. Table Two (page 8) of the Thress Statement shows that, between the start of FY2008 and the end of FY2012, a cumulative total of 84.5 billion actual pieces of First-Class Mail went missing relative to the FY2007 benchmark. The scenario that GCA is challenging – *i.e.*, the scenario in which the “count once” rule is reversed but the “ability to adjust” issue is not even considered – attributes a cumulative total of just 6.5 billion of those lost pieces to the Great Recession.[77] That amount is less than 8 percent of the total of actual missing pieces. But consider further that the actual First-Class Mail loss of 84.5 billion pieces is the net result of some factors that pushed volume up by 35.9 billion pieces, and other factors that pushed volume down by a total of 120.4 billion pieces. Therefore,

[76] Postal Service Initial Comments at 34-35.

[77] *Id.* at 27-28.

of the 120.4 billion cumulative total of pieces that essentially disappeared over those five years due to the effects of volume-reducing factors, the Postal Service (in its “reverse count once” scenario) is attributing only 5 percent of those lost pieces (1 piece out of every 20) to the Great Recession.[78] At the same time, nearly 36 billion pieces of those lost pieces of First-Class Mail are explicitly attributed to electronic diversion, an amount greater than five times the amount attributed to the Great Recession.

As explained in the Postal Service Initial Comments at 33, the obvious reason why the Commission-approved estimate of First-Class Mail lost due to the Great Recession is so low is the exclusion of nearly 56 billion pieces of missing First-Class Mail accounted for in the models only through the linear intervention variable. The Commission does not dispute the possibility that a portion of those 56 billion pieces of linear intervention volumes were actually lost due to the Great Recession.[79] Moreover, if the Great Recession caused as few as 12 percent of the 55.8 billion lost First-Class Mail pieces that were accounted for by the linear intervention variable, that alone would more than *double* the current finding that the Great Recession caused the loss of 6.5 billion pieces. Yet GCA instead wishes to discuss nothing more than the small fraction of the 6.5 billion lost pieces identified as Macro that might constitute overlap pieces. GCA thus assumes the role of the proverbial biblical character fixated on the speck of dust in his brother’s eye, while ignoring the plank in his own eye. As a practical matter, the type of overlap adjustment that GCA proposes to employ to further reduce the Great

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[78] The unmistakable implication of this is that, had there been no Great Recession whatsoever, 19 of every 20 pieces of gross First-Class Mail that disappeared over those five years would still have disappeared anyhow. Such a stark assessment should give even the most ardent skeptics regarding exigent relief pause, particularly in light of the Commission’s explicit and contrasting findings in Order No. 547 quoted above regarding the severity of the impact of the Great Recession on the Postal Service.

[79] Order No. 1926 at 77.

Recession estimate will serve only to move that estimate further away from the much higher levels that a fair evaluation of the entire record would require.[80]

3. Even Were the Commission to Inappropriately Entertain GCA's Misguided Proposal for an Explicit Adjustment to Address the Overlap Issue, GCA's Assertions that Such an Adjustment Would Cause a Substantial Reduction in the Postal Service's Estimates Is Empirically Wrong

As discussed above, the foundational logic of the econometric forecasting model requires that every piece be counted every year, and generally requires that it be done in the manner presented by the Postal Service. As illustrated by the hypothetical Macro example posed earlier, volume changes explained by fluctuations in one explanatory factor normally continue to be explained by that factor. For the particular purposes of this proceeding, however, when the decomposition analysis is being used for the express purpose of isolating Great Recession effects from the effects of other factors such as electronic diversion, some departures from those general principles may, at least in theory, be considered.

In accordance with that theoretical possibility, GCA proposes an overlap adjustment mechanism by which the same overall total number of missing pieces is still accounted for, but some pieces, in essence, are shifted from the Macro category to the electronic Diversion category. As GCA suggests on pages 10-11 of its comments, all of the inputs for the various component steps of this mechanism can be found in the parts

[80] To be clear, for purposes of this remand, the Postal Service is not challenging the Commission's year-to-year estimates of the volume lost "due to" the Great Recession, including its decision to exclude volumes accounted for by the linear intervention variable. This is reflected by section IV of its Initial Comments, which uses those volumes while otherwise correcting the "count once" error and more accurately determining when to stop counting upon the occurrence of the "new normal." Rather, the point here is that, given the Commission's current year-to-year estimates of the lost volume due to the Great Recession, which even it has admitted likely excludes some volumes due to the exclusion of the linear intervention variable, it would be fundamentally irrational to reduce the estimate even further in an attempt solely to address the "overlap" issue.

of the Commission's own spreadsheets that present the Commission's interpretation of the accepted econometric models.[81] The steps laid out by GCA on page 11 are broadly correct, but an important first step has been omitted. As Mr. Thress explained on pages I-1 and I-2 of his Statement, for the decomposition analysis, it matters what order is used when the percentages coming out of the econometric model are applied to determine an absolute number of pieces for each explanatory factor. Therefore, the first step is to replicate the VolumeCalc tab in the Commission's LR-1 spreadsheet, with the only adjustment being to change the column order such that the application of the Diversion percentage occurs *before* application of the first of the Macro variables (Employment, in column D in the original). The effect of Diversion in the original Commission VolumeCalc spreadsheet first entered the calculations as part of the Interventions in column L, although Diversion was subsequently displayed separately in Column U. In the revised VolumeCalc spreadsheet, Diversion now enters separately in column D, immediately before Employment in Column E.[82]

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[81] GCA, however, continues to distort the principles of econometrics when suggesting on page 11 that failing to make the adjustments it recommends would conflict with the econometrics (declaring that "the econometrics says otherwise"). The econometrics actually indicate that, in certain years, reductions in macroeconomic activity correlate with reductions in mail volume – presumably, for example, because the economic transactions that previous mailings were intended to facilitate have stopped occurring. The model can also indicate that changes in certain trend variables are also correlated with reductions in mail volumes – presumably, for example, because people who previously were handling economic transaction by mail are converting to electronic media. The model does its best to separate out the effects of these two different types of factors using the available input data. But the econometric model is not intended to determine which effect should take precedence in the overlap situation, in which there is no underlying transaction to be converted to any type of payment medium. GCA is simply wrong to assert that there is something in the econometric model that is inconsistent with treating the projected volume level in a given year as a function of the observed level of economic activity in that year. An adjustment may be warranted, but it is not required by the econometrics. Instead, an adjustment as blunt and misguided as that encapsulated in the "count once" rule would itself be *inconsistent* with the econometrics.

[82] This step, and also the succeeding steps described below, are presented in an Excel spreadsheet (Reply.GCA.Diversion.Overlap.xls) attached to this pleading electronically. To confirm that the column switch in VolumeCalc has been performed as intended, note that by moving the effects of Diversion from Column L up to Column D, all of the values for factors appearing in previous Columns D through L have changed. In contrast, values for factors appearing in the column immediately before the Column D:Column L block (i.e., Population in Column C), and values for factors appearing in columns after that

By switching the columns such that the effects of electronic Diversion each year are calculated before the effects of the Macro variables, any potential “overlap” pieces first being lost in any given year would necessarily be attributed as lost due to electronic Diversion. Obviously, by increasing the amount of lost volume attributed to electronic Diversion each year, the worksheet (to maintain the same observed total annual lost volume) is necessarily reducing the amount attributed in that year to some of the other factors, including the Macro variable. This is the step that is missing from the GCA description on page 11. With this step completed, the revised estimate of pieces ***first lost*** to Macro factors each year no longer contains any potential overlap pieces – those have all been assigned to the Diversion column.[83]

The next step – the one upon which GCA focuses – is to remove the estimated number of overlap pieces from the **carryover** Macro volume counted each year. This adjustment is derived by applying the electronic Diversion percentage for the category in question to the amount that would otherwise be carried over (*i.e.*, the previous year’s *annual* Macro amount). The new total counted as that year’s annual Macro mail volume loss due to the Great Recession is the sum of the first loss estimate from the revised version of VolumeCalc, plus the new adjusted carryover estimate. In each year after FY2008, therefore, the aggregate effect of these steps is to change (reduce) the counted annual Macro estimate in each of its two components, the first-time loss and the carryover loss. In the attached spreadsheet, the revised first-time effects are shown

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block (e.g., Seasonality in Column Q) have *not* changed. Naturally, the starting and ending volumes in Columns B and S are unchanged as well.

[83] Lest there be any possible misunderstanding on the matter, the effect of adding this first step is to increase, not decrease, the size of the adjustment that GCA proposes.

in the revised Summary tab, and the aggregate annual effects of both component changes are shown in a new Annual tab.

Those are the mechanics of the adjustment. What it accomplishes is perhaps best explained by reference to the same set of cable subscribers hypothesized by GCA. As the financial effects of the Great Recession cascaded through the economy year by year, in any given year more cable subscribers would lose their jobs, cancel their cable subscriptions, and quit mailing cable bill payments. Those effects are reflected in the figures for the Macro factor in two ways. To simplify, let us focus on a specific year, 2010. First, there are newly unemployed individuals who cancel their subscription in 2010. But, as GCA points out, in theory some fraction of them might coincidentally have begun paying their bill electronically that very year even had there been no recession. By switching the order of the columns, the adjustment excludes (from the count of mail first lost due to Macro factors in 2010) the pieces mailed by those individuals when still employed in 2007, 2008, and 2009, but which would have been switched to electronic payment in 2010 regardless of the Great Recession. Second, there are other individuals who were not mailing in 2010 because they lost their jobs in 2008 or 2009. The lost pieces in 2010 associated with those mailers are picked up in the Macro carryover component. Some fraction of them would likewise be among the subset of people who, even absent the recession, would have still have been mailing in 2009 but would then have switched to electronic payments in 2010. The second step of the diversion adjustment removes the lost pieces associated with those mailers from the carryover Macro count in 2010.

Therefore, these steps have now excluded any potential overlap pieces from the annual pieces counted as lost due to the Macro effects of the Great Recession, using nothing more than the Commission’s econometric output spreadsheets as GCA has recommended. The final steps are simply to add up the adjusted annual Macro volume losses under each of the three scenarios posited by the Postal Service in its Initial Comments. The details and results of the overlap exclusion adjustment on the lost volume estimates are shown in the Scenarios tab in the attached spreadsheet, and the details and results of the adjustment on the lost contribution estimates are shown in the Contribution tab. Those results are summarized below.

Effect on Excluding Electronic Diversion Overlap Pieces from the Great Recession Lost Volume Count

	As Presented Initial Comments		After Diversion Overlap Excluded		Difference	
	Volume	**Contribution**	**Volume**	**Contribution**	**Volume**	**Contribution**
Scenario One	(35,087.70)	$ (3,957.30)	(34,628.6)	$ (3,873.92)	(459.1)	$ (83.4)
Scenario Two	(105,689.0)	$ (11,431.2)	(104,427.76)	$ (11,162.69)	(1,261.3)	$ (268.5)
Scenario Three	(56,009.6)	$ (5,847.0)	(55,550.57)	$ (5,763.56)	(459.1)	$ (83.4)

Scenario One: Count Once Reversed (COR)
Scenario Two: COR, Carry All Classes Through FY2012
Scenario Three: COR, Carry Standard Mail Through FY2010

In this table, the Scenario One row presents the analysis that GCA is challenging – where the “count once” rule is reversed but the “ability to adjust” issue is not even considered. As that row shows, the GCA’s unsupported assertion that the adjustment it is advocating would reduce this estimate “substantially” is grossly overstated. Instead, imposing the adjustment would reduce both lost volume and lost contribution in the range of 1-2 percent. While not entirely trivial, by no measure do these amounts represent substantial reductions in the estimates. They certainly pale in comparison with the reductions imposed by the now-vacated “count once” rule – which were essentially 10 billion pieces in volume and $1.2 billion in contribution (as shown on page 28 of the Postal Service’s Initial Comments).

As can be seen, the absolute amounts of the adjustments do get larger in Scenario Two as the effects carry over into FY2011 and FY2012. The intuition is straightforward – in each subsequent year, additional previous mailers who are no longer mailing due to the Macro effects of the Great Recession fall by chance into the subset of mailers who would have switched to electronic payment that year even in the absence of the Great Recession.

Having thus gotten a handle on the actual magnitude of the “overlap” issue, however, it is imperative to return to the more practical question of how to address the matter for the ultimate purpose of establishing the most reasonable estimate (or at least the most reasonable estimate possible under current circumstances) of the financial harm to the Postal Service caused by the Great Recession’s extraordinary and exceptional effects on mail volume. Stated most bluntly, any possible effect of including that small number of “overlap” pieces in the lost-volume estimates is *already* offset, many times over, by likewise omitting from the estimates the exponentially larger number of lost pieces that the models account for only through the linear intervention variable but which have been entirely excluded from the count of Great Recession pieces. From a real-world perspective, the overlap pieces can be considered to be encompassed within the massive amount of already excluded pieces. As mentioned before, the cumulative linear intervention “exclusion” for First-Class Mail alone amounts to nearly 56 billion pieces, an amount more than *50 times larger* than the First-Class Mail component of the above FY2008-12 overlap estimate.

The bottom line is that any further reductions in the estimates presented in the Postal Service's Initial Comments would simply be moving the relief afforded further and further away from a reasoned estimate of actual Great Recession harm. The Commission should reject GCA's attempt to suppress necessary relief from the actual harm caused by the exigent event acknowledged in Order No. 547.

V. THERE IS NO REASON FOR THE COMMISSION TO REVISIT THE "NEW NORMAL" FRAMEWORK THAT THE COURT HAS ALREADY UPHELD.

The remaining comments propose revisiting issues other than those that the court remanded or otherwise left open on remand. There is no basis to engage in such an open-ended inquiry on remand.

A. Although the Public Representative Correctly Recognizes that the Commission's Task on Remand Extends Beyond Correcting the "Count Once" Error, His Specific Proposal Has Already Been Rejected and Should Not Be Reopened Now.

The Public Representative Initial Comments are consistent with those submitted by the Postal Service in that both agree that the Commission's task on remand should include a re-examination of the time period over which the harm inflicted by the volume losses caused by the Great Recession, the recognized exigent circumstances, continued to be incurred. The Public Representative clearly does not agree with any suggestion that the Commission should merely adjust its earlier estimates in light of the vacation of the "count once" rule and consider its job done. Beyond that, there is little to commend what the Public Representative has offered.

In very large measure, the Public Representative's Comments, which propose that an exigent case be considered pursuant to a "'temporary cost recovery approach" that he considers to be appropriate, are nothing more than a rehash of proposals offered previously. In fact, a significant portion of the pleading is an extract of earlier proposals.[84] What the Public Representative neglects to even mention is the fact that the Commission already rejected these proposals in Order No. 1926. Specifically, after describing the Public Representative proposals, and citing to the same pages of the earlier comments that the current comments now quote, the Commission found:

> The Public Representative's argument appears to be based on a misunderstanding of the Commission's findings in Order No. 864. In that order, the Commission found that the Postal Service was eligible to recover "the lost contribution associated with the volume declines from the 2008-2009 recession." This means that if the Postal Service can quantify its volume losses attributable to the Great Recession, it can recover the equivalent of its lost contribution through rate increases. This is an independent inquiry from the amount of volume actually lost. Quantification of such volume losses is independent of how the Postal Service has reacted to the volume loss in terms of shedding mail capacity or how it should adjust its network to the new normal, although those factors might be relevant to the "necessary" analysis.[85]

Since the Public Representative never acknowledges this portion of Order No. 1926, he also does not attempt to explain why the Commission was not correct in concluding that his proposals are not consistent with the framework established in Order No. 864. In fact, as the Commission correctly concluded, his proposals fall well outside the scope of what Order No. 864 articulated as the logical path by which exigent losses should be proven. In its exigent filing in September of 2013, the Postal Service followed that path exactly.

Rather than pursuing the Public Representative's preferred approach, the Commission articulated a specific "new normal" framework as to when volume losses

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[84] Public Rep. Initial Comments at 3.

[85] Order No. 1926 at 97-89 (footnote omitted).

would no longer be considered “due to” the Great Recession, one part of which considers when the Postal Service was able to adjust to the level shift in volume. The court upheld that framework, finding that it appropriately seeks to capture when those volume losses lost their “exceptional character.” However, the Public Representative is now claiming that applying this framework, even though it was upheld by the court, would be arbitrary and capricious.[86] Instead, he claims that the Commission should essentially start over, by conducting a new analysis of what he terms “temporary cost” and the “one-time” cost of right-sizing the Postal Service network. However, he offers no actual estimates of either of these costs, or any even any tangible suggestions on how these could be measured. For example, the “analysis” advocated in the Comments would require determinations regarding the “operational capacity of the network,” but then they concede that the term “operational capacity” is not being defined.[87]

Even worse, the Comments suggest that the Postal Service “also has actual information to estimate how rapidly it *was* able to adjust network capacity to approximate new normal mail volumes.”[88] The Public Representative speaks in the past tense, and thus apparently fails to recognize that the Postal Service *still* has not been able to match institutional costs to approximate new normal volumes. For instance, as explained by Commission on page 23 of the FY2013 Financial Analysis Report, the primary institutional network costs are the street costs of delivery, but those costs increase each year as the number of delivery points rise, and past efforts by the Postal Service to adjust that aspect of network capacity in response to lower levels of

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[86] PR Comments at 2 (noting that “estimating the exigency loss by factoring in the cumulative mail piece loss until the new normal is reached, as implied by the Court, is equally arbitrary and capricious.”).

[87] *Id.* at 4 & n.8.

[88] *Id.* at 4 (emphasis added).

volume by reducing the number of delivery days in a week have been blocked by Congress. Indeed, by focusing solely on reducing “network capacity” to account for the level shift in volume, his analysis would ignore the fact that the costs of the Postal Service’s networks are not a function of volume, but are based on considerations of universal service and other statutory obligations.

The Public Representative’s attempts to sketch out a viable alternative analytic framework fail miserably. To be sure, the Postal Service is not unsympathetic to his views to the extent they indicate a belief that the length of the exigent recovery should consider when the Postal Service is able to reduce its institutional costs to reflect the level shift in volume; indeed, the Postal Service argued such a position before the court. But, that is now beside the point, considering the court’s decision. The question now is how to apply the “new normal” framework in a rational manner, by considering when the Postal Service actually displayed an ability to adjust to the level shift in volume, and thus when those volume losses lost their “exceptional character.” This is laid out in the Postal Service’s Initial Comments, which conform to the “new normal” framework constructed by the Commission and upheld by the court. By contrast, the recommendation that the Commission now embark on some poorly conceived “in-depth analysis” based on the Public Representative’s largely abstract musings, rather than anything stated in either Order No. 864, Order No. 1926, or the court’s decision, is simply not a constructive suggestion at this juncture.

B. The Commission Should Reject Valpak's Proposal to Replace the Commission's Framework with One that Replaces "Ability to Adjust" with the Mere Ability to Cut Some Costs.

Finally, Valpak devotes a section of its Initial Comments to its erroneous argument that, because the Postal Service had some ability to reduce costs – mainly, employees, workhours and discretionary items – when mail volume went into freefall, that limited cost-cutting ability should somehow be relevant to how many missing pieces were lost "due to" the Great Recession.[89] This argument is nothing less than an invitation for the Commission to completely revisit its entire "new normal" framework and to essentially disregard what the court said in upholding that framework while rejecting the "count once" rule, and it should therefore be rejected.

Valpak's entire argument is based on a transparent distortion of a quote from the Postal Service's Motion to Suspend. Valpak accurately quotes the statement in the Motion that "the Postal Service had no realistic opportunity to make reductions in *institutional* costs in response to the massive volume declines."[90] Immediately thereafter, however, Valpak ignores the key word "institutional" and misleadingly converts the statement into an alleged representation that the Postal Service "had no realistic opportunity to cut costs" during the recession or in its immediate aftermath.[91] Therefore, Valpak's entire section is an attack on a strawman of its own creation.

No one disputes that the Postal Service had an opportunity (and, in fact, succeeded in its efforts) to cut some costs both during and after the Great Recession,

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[89] Valpak Initial Comments at 11-16. While addressed specifically to the "count once" issue, the premise of Valpak's position is that the Commission should apply the "new normal" even earlier the dates it used in Order No. 1926.

[90] *Id.* at 11 (emphasis added).

[91] *Id.* at 12.

but the Commission has never even suggested that those efforts alone prove anything about its ability to adjust its operations. As the Commission itself has recognized repeatedly, not only could the Postal Service not cut *institutional* costs, it could not even cut its *attributable* costs until FY2013 at the rate at which its volumes were falling.[92] The figures offered by Valpak – and, indeed, the entire portion of its comments – are irrelevant to the true issues that the Commission needs to address to reconcile the "new normal" analysis with its finding concerning the Postal Service's ability to adjust its operations to the level shift in mail volume.[93]

To the extent Valpak's comments intimate that the Postal Service somehow could have adjusted even *during* the heart of the Great Recession, such a suggestion would be inconsistent with both Part IV *and* Part V of the Order No. 1926 – which, while inconsistent with each other for the reasons stated in the Postal Service's initial comments, nowhere suggest that the Postal Service could have adjusted while the volumes remained in freefall such that those losses were no longer "extraordinary or exceptional." Moreover, the court rejected the "count once" rule as being inconsistent with the "new normal" framework, because it was irrational for the Commission to refuse to consider volume losses as being "due to" the Great Recession on the basis

[92] *See* Postal Service Initial Comments at 13-21.

[93] Valpak argues that the total number of employees is "a reasonable proxy for all of the Postal Service's cost reduction efforts." However, there is no need to use such a proxy, when there are figures much more relevant and direct that can be used in considering the Postal Service's ability to adjust, as discussed in the Postal Service's Initial Comments. Furthermore, even if it was appropriate to consider employment trends as the sole focus as to when the Postal Service demonstrated an effective ability to adjust to the level shift in volume, doing so would support using FY2013, at the very least, as the beginning of the "new normal." It was in that year that the Postal Service began to substantially increase its number of non-career employees, due to the increased flexibilities provided by the collective bargaining agreements that came into force following the Great Recession, and also the year that the Postal Service initiated the most significant in the string of separation incentives for career employees. *See* Financial Analysis of United States Postal Service Financial Results and 10-K Statement, Fiscal Year 2014, at 12-14 (Apr. 1, 2015).

that the Postal Service should have adjusted to those losses even *before* the "new normal" was reached. By proposing to consider cost adjustments "during the recession," Valpak is proposing that the Commission do the very thing the court rejected.

VI. THE CONTINUATION OF THE SURCHARGE REMAINS "NECESSARY," CONTRARY TO POSTCOM'S BASELESS ASSERTION

PostCom asserts that there is a "serious question" as to whether the continuation of the exigent surcharge (presumably for any period of time) is "necessary" within the meaning of the exigent provision.[94] However, the Postal Service thoroughly demonstrated in its initial comments that extending the surcharge is plainly "necessary" for the Postal Service "to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States," given its current financial condition and the reasoning employed by the Commission in Order No. 1926.[95] PostCom provides no rational basis for the Commission to reach a different conclusion.

PostCom's argument is wholly divorced from the language of the statutory standard, and how that standard has been interpreted by the Commission. PostCom simply notes that the Postal Service's current liquidity position is not "as precarious" as it was several years ago, when the Commission issued Order No. 1926.[96] However, the mere fact that the Postal Service's liquidity situation is improved says nothing about whether the surcharge remains "necessary." Rather, in Order No. 1926, the Commission appropriately recognized that the Postal Service's ability to "maintain and

[94] PostCom Initial Comments at 13-14.

[95] Postal Service Initial Comments at 38-45.

[96] PostCom Initial Comments at 13.

continue the development of postal services of the kind and quality adapted to the needs of the United States" requires a comprehensive examination as to whether the Postal Service's current liquidity is adequate to ensure that the Postal Service can cover its current and anticipated operating expenses, make needed capital outlays, and have a measure of cushion to absorb adverse circumstances.[97]

When considering these factors, it is clear that while the Postal Service's liquidity situation is somewhat improved from several years ago (a fact that is due in large part to the exigent surcharge itself), it certainly has not reached a point at which it can be rationally determined that the surcharge is no longer "necessary." Indeed, the current level of liquidity represents less than *one month* of operating expenses, and the Postal Service remains at its debt limit, a burden that it has no foreseeable means of paying down.[98] Furthermore, as the Commission recognized in Order No. 1926, the Postal Service faces significant financial pressures: rising operating costs, a constrained ability to achieve significant new cost savings opportunities while still maintaining needed services, and a pressing need to begin making capital investments to ensure that it can continue to provide adequate postal services. In the face of these facts, all of which

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[97] Order No. 1926 at 116-122.

[98] PostCom cites to the Bureau of the Fiscal Service to note that the Postal Service had $7.2 billion in cash on deposit with the Treasury at the end of May. However, this figure is not comparable to what the Postal Service reports as its liquidity, which formed the basis for witness Nickerson's testimony and Order No. 1926's discussion of whether the exigent surcharge is "necessary," and which is also discussed in the Postal Service's financial reports. When the Postal Service reports its liquidity, it makes a number of adjustments to the cash it has on deposit with the Treasury, in order to arrive at a figure that most accurately reflects the amount of cash available to fund operations. For instance, the Postal Service makes a reduction for any checks that are outstanding but have not yet cleared the bank. A meaningful consideration of operational liquidity also excludes restricted cash, which is included in the $7.2 billion figure but can only be used for certain Inspection Service activities; restricted cash totaled $243 million on May 31. Measured appropriately, the Postal Service's liquidity was approximately $6.7 billion at the end of May, essentially the same as its liquidity situation at the end of Quarter II. The Postal Service currently projects that, at the end of this fiscal year, it will have approximately $6.3 billion of liquidity, a figure that assumes the extension of the surcharge.

were discussed by the Commission in Order No. 1926 but are ignored by PostCom, it would be absurd to conclude that the Postal Service has experienced a "significant change in financial health," such that the surcharge is no longer "necessary."

Perversely, PostCom also asserts that the Postal Service's plans to increase capital spending further demonstrates that the surcharge is not "necessary," because "[a]n enterprise that is in a liquidity crisis, or expects to return to one, does not make long-term commitments of this kind."[99] But, the Commission approved the exigent surcharge in part because of a recognition that capital outlays "must be increased" over the historically low levels of capital spending that, while a short term expedient during the period of upheaval caused by the Great Recession, simply cannot be prudently maintained if the Postal Service is to continue providing postal services "of the kind and quality adapted to the needs of the United States."[100] Therefore, PostCom is arguing that because the additional contribution being provided by the exigent surcharge is doing precisely what it was intended to do, it is no longer needed. The Commission simply cannot apply the "necessary" clause in such an irrational manner.

This is not the first time that PostCom has urged the Commission to interpret the "necessary" clause in a cramped and atextual manner. Indeed, the Commission previously rejected very similar assertions. Prior to Order No. 1926, PostCom made basically the same argument that it has made here: if the Postal Service has a minimal level of liquidity to continue operating, an exigent increase is not "necessary."[101] The Commission rejected such a narrow understanding of the "necessary" clause, finding

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[99] PostCom Initial Comments at 14.

[100] Postal Service Initial Comments at 41-42.

[101] MPA et. al. Initial Comments (Nov. 26, 2013) at 54-55 & n.12.

that the provision should not be applied simply by considering whether the Postal Service may be able to muddle through at a particular level of liquidity for the time being, and the court upheld the Commission's interpretation.[102] Considering the Postal Service's liquidity position, which is precarious and will remain so going forward, the Commission should again reject PostCom's suggestion that it interpret the "necessary" clause in a way that ignores its expansive language and the fundamental purposes that it serves: protecting the Postal Service's ability to maintain and continue the development of needed postal services.

VII. CONCLUSION

For the reasons discussed above and in the Postal Service's initial comments, the Commission should recalculate the amount of mail volume and contribution lost "due to" the Great Recession by properly correcting the "count once" error and by reasonably resolving the point at which the Postal Service could have adjusted its operations in response to the shift in mail volume that the Great Recession caused.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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[102] Order No. 1926 at 115-121. The Commission's interpretation of the "necessary" provision was upheld by the court. *Alliance of Nonprofit Mailers,* slip. op. at 19-20. Indeed, while the court had no trouble in rejecting the Mailers' econometric arguments, it was particularly unimpressed with their proffered interpretation of the "necessary" clause, noting that its argument was "[l]ast and certainly least" and that it sought to interpret the clause in a "rather sensational" fashion.

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